Tail Wags Dog Again: Retaliation Claim Survives Despite Dismissal of Harassment Claim

BY ROBERT G. YOUNG • DECEMBER 29, 2017

The United States District Court for the Northern District of Illinois recently weighed in on the dichotomy of having an untenable discrimination claim but a viable retaliation claim. In Peppers v. Benedictine University, the University's former Associate Director of Media Relations filed suit alleging that he was subjected to a hostile work environment based on his race and sex, and that he was fired in retaliation for filing a charge with the EEOC about his work environment. The Court dismissed the harassment claim, finding that the plaintiff failed to allege that the harassment he experienced was tied to his race or gender. The Court reiterated that Title VII does not provide a vehicle for all workplace grievances, only those based on some protected status.

However, the Court allowed the plaintiff's retaliation claim to go forward. The Court noted that the underlying harassment claim did not need to be meritorious to ground the retaliation claim; the plaintiff only needed a good faith belief that discrimination had occurred, a standard that the Court deemed satisfied. The Court also noted that the plaintiff was terminated less than six months after first going to the EEOC and that the plaintiff alleged that the university posted a position similar to his shortly after his termination, despite telling him that his position was being eliminated. Together, the Court found that these allegations plausibly suggested retaliation, and therefore allowed the claim to proceed to discovery.

Client Tip: This case provides yet another example of the axiom that a discrimination claim need not be viable itself to provide mooring for a viable retaliation claim. Even where an employee's claim of "harassment" is of dubious merit, an institution still must be able to articulate a legitimate business rationale for any adverse decision made after the employee first raises concerns to guard against a separate retaliation claim.

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