

Truth and Consequences: Title VII's Opposition Clause and Employer's Reasonable Belief

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This summer, the United States Court of Appeals for the Fourth Circuit, which hears appeals from North Carolina federal courts, issued an opinion that has employers taking note. In [Villa v. CavaMezze Grill, LLC](#), the court affirmed the lower court's decision that an employer does not violate the opposition clause of Title VII if it terminates an employee for making what the employer reasonably determines to be a false report of sexual harassment, even if it turns out that the report was not false.

[Villa](#) involved an employee who alleged that she was terminated in retaliation for reporting a Title VII violation communicated to her by a former employee. While investigating the alleged Title VII violation, the employer spoke to the persons involved and they denied the reported actions. When the employee was then fired, she alleged she was terminated for reporting a Title VII violation. The employer countered that it terminated her employment because the allegation that she reported was fabricated, not in retaliation for her making the report.

Background

Villa was employed as a low-level manager reporting directly to the general manager. About 18 months after beginning work with the employer, Villa called the director of operations and reported that a former employee had told Villa that the general manager had offered to give the former employee a raise in exchange for engaging in sexual relations with him. Villa also claimed that this conversation took place in the presence of another employee. Villa also told the director of operations that she suspected that another employee left her employment because of a similar offer by the general manager.

The director of operations opened an investigation in consultation with the employer's chief executive officer. The director interviewed the individuals identified by Villa as complaining and having knowledge of the harassment.

During the investigation, the former employee whom Villa alleged made the comments about the general manager told the director that her reason for leaving the restaurant was a better paying job. She also denied that she left because the general manager told her that he would only give her a raise if she engaged in sexual relations with him. The former employee also denied making the statements that Villa claimed she made.

The director of operations also contacted the other former employee who Villa indicated might have quit

because the general manager made a similar demand for sexual favors. When interviewed, that former employee said that she resigned her position because she lived far away from the restaurant and she also laughed at the suggestion that the general manager had propositioned her. She further stated that whoever made such a statement was lying.

Villa had claimed that another employee overheard one of the alleged victims make her statement, but when the director interviewed the "overhearing" employee, he similarly denied knowing anything about either former employee leaving because of any sexual harassment.

The investigation led the employer to conclude that Villa fabricated the entire story and soon thereafter, her employment was terminated.

The Lawsuit and Changed Stories

Villa filed a complaint against her former employer alleging that it had retaliated against her in violation of the retaliation provisions of Title VII. During the discovery phase of the lawsuit, one of the former employees changed her story and testified that she had lied when interviewed by the director of operations and that Villa had accurately reported their conversation. Although the former employee admitted to telling Villa that the general manager offered to give her a raise in exchange for sex, the former employee also testified that the general manager had never, in fact, made such an offer.

The employer moved for summary judgment arguing that even if it incorrectly determined that Villa fabricated the story, terminating Villa for the fabrication based on the employer's actual belief that Villa fabricated the story involving the former employee did not violate Title VII. The trial court entered judgment in favor of the employer and Villa appealed.

The Ruling

The Fourth Circuit, relying on the language of Title VII, agreed that the employer had not retaliated against Villa in violation of Title VII because it did not terminate her because she engaged in particular protected conduct, i.e., reporting the allegation and opposing the conduct. Rather, the employer terminated her because its investigation convinced the employer that her allegation was fabricated. Villa could not succeed on a claim of retaliation because she failed to prove the employer had any retaliatory intent, a critical component of any retaliation claim. The Fourth Circuit specifically stated that "Title VII retaliation claims require proof that *the desire to retaliate* [is] the but-for cause of the challenged employment action."

Although the result may have ultimately proved unfair to Villa, that did not make the termination decision unlawful. The Fourth Circuit reiterated that courts are "not to sit as a kind of super-personnel department weighing the prudence of employment decisions." When an employer, due to a factual error, determines that the employee was not engaged in protected activity or conduct because, as in Villa, it believes the employee is lying, then the employer cannot be said to have acted out of a desire to retaliate for the protected conduct or activity.

The Crucial Distinction Between the Opposition Clause and the Participation Clause of Title VII

Title VII prohibits retaliation against employees because they either oppose discriminatory actions (the "Opposition Clause") or because of their participation in any manner in an investigation, proceeding, or hearing under Title VII ("the "Participation Clause."). Villa's claim clearly involved the Opposition Clause, and not the Participation Clause, because the actions for which she was terminated occurred prior to any proceeding under Title VII.

Under the Participation Clause, an employer is prohibited from terminating or disciplining an employee who has made a charge, testified, assisted, or participated in any manner in a Title VII proceeding, even if the testimony is unreasonable or untruthful.

The same is not true in Opposition Clause cases. In Villa, the court made clear that an employer does not violate Title VII's Opposition Clause if the employer disciplines or terminates an employee who opposes a perceived violation of Title VII if the employer, in good faith, took such action because the employer believed the employee was not telling the truth, even if it later turns out that the facts were true. In such a case, as in Villa, the employer is not retaliating because of the opposition, but because of the perceived falsehoods. This is true even if, as in Villa, it is subsequently determined that the report may have been truthful. As the Fourth Circuit explained, "engaging in knowing fabrications certainly does not amount to engaging reasonably in activities opposing discrimination; and precluding employers from taking any action against employees who have engaged in such deceit obviously would create enormous problems for employers who would be forced to retain dishonest or disloyal employees."

Conclusion

Thus, employees who attempt to oppose Title VII violations by reporting what the employer reasonably determines is fabricated conduct are not protected from termination in connection with making such claims, even if it is determined later that the claim was not false. It is the reasonable belief of the employer at the time the discipline or termination occurs that controls not the ultimate truth or falsity of the claim.

Admittedly, these are fine distinctions, and employers should seek the advice of experienced counsel before terminating or otherwise punishing an employee for a perceived false report of a Title VII violation.

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