

ARIZONA

EMPLOYMENT LAW LETTER

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Postal worker's retaliation claim comes up short

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It's not uncommon for employees who allege discrimination to drop the claim later and focus solely on a retaliation claim against their employer. Courts often dismiss discrimination claims as baseless, only to find the employer retaliated against the employee who made the allegations. Although employers aren't required to suspend previously planned acts (e.g., investigations or discipline) after a discrimination claim has been made, you should take care to proceed along the lines previously contemplated and document legitimate, nonretaliatory reasons for taking such action. Doing so can help you defend against a slew of allegations that the adverse actions are retaliatory.

Background

In 2017, Loretta Short was the postmaster of the United States Postal Service (USPS) in Holbrook. Her supervisor was Brandi Stoner. In late 2017, she complained to the USPS's EEO counselor that she was receiving unfavorable treatment based on her race and gender.

Following Short's complaint, a slew of events occurred (e.g., reassignments, denial of leave, electronic surveillance, etc.) relating to her employment. She filed a retaliation complaint against the USPS in the federal District Court for the District of Arizona. The USPS asked the court to enter judgment in its favor.

Retaliation claim

To succeed on her retaliation claim, Short had to establish that:

- She engaged in protected activity;
- She was thereafter subjected to an adverse employment action by the USPS; and
- A causal link existed between the protected activity and the adverse employment action.

The USPS conceded that Short engaged in protected activity when she filed her internal EEO complaint and that Stoner (the supervisor about whom Short complained) became aware of the complaint on January 13, 2018. It argued, however, that Short couldn't otherwise establish the remaining elements of her retaliation claim.

Adverse employment action

Title VII of the Civil Rights Act of 1964 "protects an individual not from all retaliation, but from retaliation that produces an injury or harm." Such harm required a showing by Short that a "reasonable employee" would have found the challenged action materially adverse, such that it may dissuade them from making or supporting a discrimination charge. A standard of "material adversity" is required to separate significant from trivial harms. Normally, petty slights or minor annoyances won't suffice.

According to the court, Short didn't set forth a comprehensive list of alleged adverse employment actions, forcing the court to construct one for her. In doing so, it noted that several of her potential adverse employment actions occurred before Stoner was aware of the EEO complaint and couldn't support her retaliation claim:

- Less favorable treatment;

- Stoner's rejecting medical notes as insufficient for the December 26, 28, and January 24 sick leave requests; and
- Short's December 29 assignment to Flagstaff during a fact-finding investigation.

The court acknowledged the rejection of the January 24 documentation occurred after Stoner became aware of the EEO complaint but noted she handled the leave request in the same manner as the other two that were denied before she became aware of the EEO complaint. The court also acknowledged that classifying the leave as annual leave rather than sick leave didn't materially affect Short enough to rise to the level of an adverse action.

The court granted judgment in favor of the USPS and dismissed Short's claim.

Takeaways

If Short had better articulated her retaliation claims during the litigation, the outcome may have been different. Since this is rarely the case, you should take care to ensure managers are trained on how to implement all policies properly and consistently, how to act following a discrimination complaint, and how to document the legitimate and nonretaliatory reasons for the adverse action taken.

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