

Fourth Circuit Reverses District Court's Dismissal of Plaintiff's Title VII Retaliation Claim

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A recent ruling by the U.S. Court of Appeals for the Fourth Circuit serves to once again remind employers of the dangers of treating an employee unfairly simply because he or she engaged in protected activity under Title VII of the Civil Rights Act. Conduct that may not rise to the level of a materially "adverse action" in a discrimination claim could still be sufficiently adverse to satisfy the lower standard applied in retaliation cases.

By way of an unpublished opinion issued earlier this month, the Fourth Circuit reversed a U.S. district court's decision to dismiss a plaintiff's Title VII retaliation claim against Prince William County, Virginia. In *Williams v. Prince William County* (No. 15-1711, Apr. 14, 2016), the appellate court held that the district court had applied "too stringent a standard for determining what constitutes an adverse employment action" in the context of a Title VII retaliation claim. In other words, the trial judge was wrong to apply the same criteria for an "adverse employment action" used in discrimination cases to the plaintiff's retaliation claim.

Plaintiff Carol Williams had been a County employee for nearly 20 years when she applied for a Director-level position within the County's Department of Social Services ("D.S.S."). She was not selected for the job, which instead went to a male applicant, Leviticus Bass ("Bass"). Over the next year, Williams and Bass clashed frequently; Williams felt that Bass' management style was "bullying" and that Bass discriminated against Williams and other female employees. Several of Williams' coworkers also indicated to Williams that Bass "did not like her." According to her Amended Complaint, Williams repeatedly expressed her concerns to Bass about his bullying during the first quarter of 2013.

In April 2013, Bass informed Williams that her position was being eliminated and that she was being transferred to the Molinari Juvenile Shelter (the "Shelter") to cover evening and weekend shifts. Shortly thereafter, Williams filed a charge against Bass with the County EEO office alleging unlawful discrimination on the basis of her gender. She later filed a second charge against the D.S.S. Director and Deputy Director, alleging that her transfer to "an undesirable position and working schedule" had not been done to improve the department, "but instead to discriminate and retaliate against her."

According to Williams, D.S.S. retaliated against her after she filed her EEO complaints by denying her a pay increase that she allegedly deserved, moving her office and taking away or limiting her equipment, excluding her from department meetings, and giving her unattainable goals in her performance evaluation. These actions by her employer formed the crux of the retaliation count Williams ultimately filed with the district court.

When the County moved to dismiss Williams' lawsuit, Judge Claude Hilton of the district court ruled that Williams had "not alleged facts sufficient to establish a plausible claim of sex discrimination or retaliation under Title VII." Importantly, the court found that Williams' transfer to the shelter—the action that gave rise to her EEO complaints—was not a "demotion" and had no "significant detrimental effect" on her employment. As such, Judge Hilton concluded that Williams had failed to allege an "adverse employment action," which is a necessary element for both discrimination and retaliation claims under Title VII.

Williams appealed only that portion of the district court's decision that dismissed her retaliation claim. She argued that while both discrimination claims and retaliation claims have an "adverse action" component, the standard for what constitutes an adverse employment action in the discrimination context is much more stringent than the standard applied in retaliation cases. Upon review, the Fourth Circuit agreed that the trial court was wrong to apply the same standard, noting that "unlike a substantive discrimination claim, the adverse action component of Title VII's antiretaliation provision 'is not limited to discriminatory actions that affect the terms and conditions of employment.'" Rather, an adverse action in a retaliation

claim can be anything which “might well have dissuaded a reasonable worker from making or supporting a charge of discrimination.” The appellate court held that Williams’ Amended Complaint sufficiently alleged several negative actions by D.S.S. that occurred after the filing of her EEO charges, and that it was “at least plausible that such actions” could have the effect of discouraging another employee from complaining about discriminatory conduct.