

FEBRUARY 12, 2014

## HR DIRECTOR FIRED FOR STRESSING OUT SUBORDINATES - OR WAS IT RETALIATION?

### **“YOUR LEADERSHIP STYLE IS NOT IN ACCORDANCE WITH COMPANY PRACTICES.”**

This is what an HR Director was told when he was terminated after his company learned that he was “stressing out” two of his assistant HR managers. The tense work environment that he created caused both managers to seek counseling and each had begun looking for jobs elsewhere. Of course, there is always another side to the story. The HR Director claimed he was a very competent manager, and he was fired in retaliation for raising questions about the fairness of the company’s pay structure and compliance with its affirmative action plan. He filed suit for retaliation under Title VII and lost. The court’s analysis provides helpful insight on successfully dealing with difficult employees and claims of retaliation.

### **HR DIRECTOR COMPLAINS ABOUT COMPANY PRACTICES**

*This is Retaliation!* Two years before his termination, a female employee complained that the HR Director had verbally abused her. After the HR Director learned that she had made a complaint about him, he filed a formal complaint against her, alleging she was having an improper relationship with the company’s Safety Director. The company’s investigation of his complaint indicated there was merit to her complaint against him, and the HR Director’s subsequent complaint was part of an effort to discredit her. In response to that conclusion, the HR Director fired back claiming that the company was “challenging his integrity” and retaliating against him for making a good faith report. Further, the HR Director stated that he was seeking professional counseling as a result of the retaliation. He also stated that if any further retaliation occurred, he would assume it was a response to the filing of his report and/or his age and/or his status as a disabled Vietnam veteran.

*Minorities and the disabled aren’t paid fairly!* During his tenure as the HR Director, he had occasionally expressed concern about the company’s affirmative action plan and questioned whether certain minority or disabled employees were being paid at levels comparable to other employees. Management had looked at the numbers and concluded that everything was fine. Even so, a year later he believed that the underlying data could have been “bogus” and wanted again to make sure that everything was legal. His emails state that he was not making any specific wage recommendations but merely wanted the appropriate people to look into matters to ensure there was “no discrimination.”

### **MANAGEMENT BECOMES FRUSTRATED**

Soon after these emails, his boss sent an email expressing frustration:

*I feel as if you keep asking the same questions over and over without demonstrating that you truly understand what we previously discussed... In addition, as I try to gain clarity around local practices, you seem to be distant from what actually happens day to day and are having difficulty answering basic questions without assistance from your team.*

### **ANOTHER COMPLAINT FILED**

*Affirmative Action Non-Compliance!* A day after that email, the HR Director filed a second complaint alleging a failure to comply with federal Affirmative Action Guidelines. He closed his complaint by noting that he would regard any further “random written or verbal comment” by the company as an attack on his character and professional reputation. He further reiterated that if he experienced any retaliation as a result of his complaint, he would assume “it is due to filing this report, my Disabled Vietnam Veteran status and/or my age, and I will take appropriate action.”

### **LEAVE OF ABSENCE DUE TO STRESS**

About three weeks later, he requested and was granted a leave of absence. While on leave, he sent an email to his boss indicating his belief that the company might be violating federal laws by not compensating employees fairly. He further indicated that his mental condition was deteriorating in light of all the stress “over this matter,” which he described as the most stressful event he had dealt with in forty years and reminded him of his service in Vietnam. He further stated that he knew his job was on the line. So now, in addition to his hints at retaliation, age discrimination and veteran status, he adds a hint of disability discrimination due to his “stress.”

## INVESTIGATION REVEALS “UNPROFESSIONAL AND ABUSIVE” BEHAVIOR

Although the HR Director’s performance reviews were generally considered good and even warranted a bonus, the company used the time while he was on leave to review his overall job performance. During the investigation, it was learned that he often made disparaging remarks about subordinates and had been unprofessional and abusive. Both of his assistant HR managers reported that they were under so much stress that they had sought counseling as a result of working for him and both were looking for other jobs. Based on that investigation, he was told that his employment was terminated because his style was “inconsistent with the company’s desired leadership competencies and capabilities.” He then filed this lawsuit.

## WHY THE HR DIRECTOR LOST HIS CASE

In claims alleging retaliation, the first question is whether the emails, complaints and other inquiries constitute protected activity. The lengthy pattern of questioning company practices are sufficient, according to the court, to trigger the protection. However, the court also said a jury could conclude that his complaints were not raised in good faith but were simply an effort on his part to immunize himself from any consequences of his own performance deficiencies. The court observed given the HR Director’s training and experience in human resources that could indeed be the case. So, does a jury get to decide? No, because there is more to consider.

## WHAT CAUSED THE TERMINATION?

The remaining question is whether there is evidence that the termination was caused by his protected activity. Recently, the Supreme Court held that retaliation claims require traditional “but-for causation,” not a lesser “motivating factor” standard of causation. See our article [“But-For” the Supreme Court – It Would Have Been Easier to Prove Retaliation](#).

The review the company undertook prior to his termination revealed his troubling treatment of co-workers and an abrasive management style. These issues on their own were enough to justify his termination without respect to any protected activity. According to the court, a company cannot be expected to retain a manager who adversely impacts the mental health and morale of his employees and at the same time taxes the company's own counseling resources. Such a company risks losing its employees and opens itself up to legal exposure if the affected employees face a hostile work environment. Ultimately, the HR Director was not able to convince the court that the company’s reason given for his termination was a pretext to cover up an unlawful motive.

## LESSONS FOR EMPLOYERS

- The important question is not whether the employer's decision was “right” in some objective sense; the question is whether the employer's stated reason is deceitful.
- Evidence about an employee’s general good qualities does not speak to the question of whether the employer was lying when the stated reason is poor management style. Being competent, fair and dedicated does not mean that the same individual is also a good manager of people.
- The underlying motivation for conducting an investigation is irrelevant. The employer is within its rights to terminate an employee once it uncovers what it believes to be a legitimate shortcoming even though the original motive for the investigation might have been improper.

Reference: *Koehler v. Sara Lee Corp., No. 1:12-cv-00372-WCG (E.D. Wisc., 2013)*.

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