

PUBLICATION

Fourth Circuit Joins Other Federal Courts in Broadly Interpreting the Scope of Title VII Retaliation Claims

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On May 7, 2015, the Fourth Circuit ruled that an isolated instance of harassment, if "extremely serious," can create a hostile work environment, and that complaining about such harassment constitutes protected activity under Title VII's anti-retaliation provisions. This ruling comports with the general trend of federal courts toward broadly interpreting the scope of Title VII's anti-retaliation provisions.

The lawsuit arises from an incident that allegedly occurred in 2010, when plaintiff Reya C. Boyer-Liberto, an African-American woman, was working as a cocktail waitress at the Clarion Resort Fontainebleau Hotel in Ocean City, Maryland. Specifically, on September 14, 2010, Boyer-Liberto contends that a Caucasian food and beverage manager yelled at her for supposedly violating protocol by walking through the hotel's kitchen to deliver a cocktail to a customer. During that incident, the manager allegedly referred to Ms. Boyer-Liberto as a "porch monkey."

The next day, Ms. Boyer-Liberto reportedly went to the hotel's management office to complain about the manager's conduct. There, Ms. Boyer-Liberto was confronted by the manager, who allegedly called her a "little girl," said she would "get [her]," threatened to report her to the hotel's owner, and again called her a "porch monkey." A few days later, Ms. Boyer-Liberto complained to the hotel's human resources director that she had been racially harassed by the manager. After being notified of Ms. Boyer-Liberto's complaint, the hotel's owner inquired about her work performance and received a negative evaluation of Ms. Boyer-Liberto. The hotel's owner fired Ms. Boyer-Liberto on September 21, 2010.

Ms. Boyer-Liberto subsequently filed suit against the hotel and the hotel's owner, asserting claims of hostile work environment and retaliation. The district court dismissed the lawsuit, finding that the manager's conduct "was not so severe or pervasive as to create a hostile work environment." The initial Fourth Circuit panel affirmed.

On rehearing, the Fourth Circuit vacated the decision of the district court. Regarding the hostile work environment claim, the Court held that an extremely serious incident of harassment, even if it is relatively isolated, can create a hostile work environment. Accordingly, the Court found that a reasonable jury could find that the manager's alleged use of "porch monkey," a racial epithet that "goes far beyond the merely unflattering" and is "degrading and humiliating in the extreme," combined with the manager's threats to use her supervisory powers to terminate Ms. Boyer-Liberto, was severe enough to create a hostile work environment.

With respect to the retaliation claim, the Court rejected its prior ruling in *Jordan v. Alternative Resources Corp.*, 458 F.3d 332 (4th Cir. 2006) that complaining about an isolated incident of harassment is not protected activity under Title VII's anti-retaliation provisions, and instead held that an employee who reports an isolated incident of harassment that is physically threatening or humiliating is protected from retaliation, even if the harassment has not yet risen to the level of a hostile work environment. The Court concluded that a reasonable jury could find that the manager's alleged two uses of "porch monkey" was severe enough for Ms. Boyer-Liberto to reasonably believe that a hostile work environment was in progress.

The Fourth Circuit's decision aligns with other federal court decisions directing that Title VII's anti-retaliation provisions be interpreted to provide broad protection from retaliation. Considering this employee-friendly standard, employers must take extra precautions to ensure that any and all complaints of discrimination are treated seriously and that appropriate actions are taken to resolve such complaints. Further, employers must be careful when subjecting an employee to an adverse employment action – such as termination or demotion – after he or she has complained about discriminatory conduct, and stand prepared to demonstrate the action was undertaken for legitimate reasons, in order to avoid a violation of Title VII's anti-retaliation provisions.