



And The Defense Wins

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DRI member [Mercedes Colwin](#), managing partner of **Gordon & Rees's** New York City office, recently obtained summary judgment on a Title VII retaliation claim on behalf of a national employer in the U. S. District Court of the Northern District of New York. The plaintiff claimed she was subjected to numerous discrete acts of "retaliation" by various supervisors over a nearly nine year period, and was eventually discharged after having filed a claim of harassment against the employer.

In rendering its decision, the court first agreed with defendant's assertion that the continuing violation theory under Title VII did not apply to claims of retaliation. Therefore, events occurring more than 300 days prior to the date in which the plaintiff filed her charge of retaliation with the EEOC were outside the statute of limitations and could not be considered as part of the plaintiff's claim. As a result, the defense team greatly reduced the number of alleged acts of retaliation the court had to consider. As to the acts the plaintiff alleged were retaliatory that did fall within the statutory time frame, the court concluded that three of them were not adverse actions because the plaintiff was not harmed or injured by any of the actions, nor was she dissuaded from filing internal complaints, and in fact did subsequently file.

The plaintiff's remaining allegations of retaliatory conduct included an allegedly biased investigation of her claims by human resources and resulting discipline, reviews given by her new supervisor, temporary exclusion from certain training, and a subsequent probation and termination. The court concluded that these events could be considered adverse actions and, as they all occurred within a six month window from the plaintiff's most recent complaint of unlawful conduct, a fact finder could potentially infer a causal connection between the complaints and the actions. Consequently, the plaintiff could establish a prima facie case of discrimination. However, the court further concluded that the employer had sufficiently established legitimate, non-retaliatory reasons for the alleged adverse actions, namely a pattern of poor performance, thereby properly establishing its next burden and necessitating that the plaintiff establish pretext in order to overcome the defendant's motion.

Although the plaintiff claimed she could establish pretext for each of the remaining allegedly adverse actions, the court concluded she could not, in fact, do so. In particular, the court concluded that the employer conducted a thorough investigation of the plaintiff's claims of retaliation when it interviewed 19 individuals in three departments and prepared an eight page report. Moreover, even if the investigation was flawed, as the plaintiff claimed, that is not in and of itself evidence of pretext. Similarly, the court found that plaintiff's claim that she was not sufficiently provided feedback during her review prior to her termination to be without merit, as the evidence clearly established that the plaintiff was given both verbal

feedback and written documentation about her performance. Overall, the plaintiff presented no credible evidence to refute the substantial findings supporting the employer's determination that the plaintiff was inadequately performing her job. As a result, the plaintiff had not satisfied her burden of demonstrating pretext sufficient to overcome the defendant's motion for summary judgment.

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