

Court Incorrectly Denies Employee Opportunity to Present Comparator Evidence

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A product engineer took an approved four-week leave of absence to visit family in Gaza, but upon return, security issues rendered it impossible for him to return to the United States prior to the end of his leave. His employer extended his leave for another 45 days. On the day he was scheduled to be terminated for failure to return to work, the employee sent an email to his supervisors advising that he was finally able to exit Israel and was trying to get a flight back to the United States. The employee returned to work roughly one week later and was informed that he had been terminated.

The employee filed suit against his employer, alleging age and national-origin discrimination and retaliation in violation of the Age Discrimination in Employment Act, the Elliott-Larsen Civil Rights Act, and Title VII of the Civil Rights Act of 1964 as amended. The employer filed a motion for summary judgment, seeking dismissal of the action, which was denied.

In discovery, the employee identified various employees as being “comparable” employees in order to establish that he was treated differently. The employer then filed a motion in limine in an effort to exclude the employee’s evidence of comparable employees on the grounds that none of the individuals were similarly situated because the various leave and termination decisions relating to these employees were made independently by separate decision makers that had no involvement in the decisions concerning this employee’s leave or termination.

The district court granted the employer’s motion and then issued an order to show cause why summary judgment should not be granted for the employer. The employee conceded that if he was not allowed to present evidence of these allegedly similarly situated employees, he could not prevail on his claims. The district court then granted summary judgment. The employee appealed.

The Sixth Circuit Court of Appeals agreed with the employee and reversed the court’s in limine ruling regarding the comparator evidence, and consequently, vacated the district court’s grant of summary judgment. The district court had focused on whether the employee had established that he was treated differently from similarly situated employees outside the protected class. The court held that “to be deemed ‘similarly situated,’ the

individuals with whom the plaintiff seeks to compare his/her treatment must have dealt with the same supervisor.” The Court of Appeals, however, found that this supervisory inquiry does not automatically apply in every employment discrimination case, and that the court should make an independent determination about the relevancy of the data before reaching a conclusion. The Court of Appeals accordingly found that the district court improperly placed too much weight on the supervisory factor.

Further, the Court of Appeals found that the district court made findings of contested facts and concluded that a certain supervisor terminated the employee pursuant to an automatic termination policy, though there was sufficient evidence demonstrating otherwise.

In conclusion, the Court found that the district court improperly considered non-evidentiary matters on a motion in limine, and applied an incorrect legal standard to determine whether the other employees were similarly situated, which supported the reversal of the order in limine and vacating the ruling on the motion for summary judgment.

For more information read [Louzon v. Ford Motor Co., No. 11-2356 \(6th Cir., June 4, 2013\)](#).

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