

Illinois Court: Participation in Employer's own Discrimination Investigation After EEOC Complaint is Protected Activity Under Title VII

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It is generally a rule that an employer may discipline its employee for his behavior during an internal investigation of alleged discrimination. A federal district court in Northern Illinois recently joined the Sixth and Eleventh Circuits, however, in recognizing an exception to that rule: where the investigation occurs after a complaint has been filed, employees who participate are protected from discipline by Title VII.

The case, *Gomez v. Restaurant One Limited Partnership d/b/a Spiaggia Restaurant and Café*, Case No. 10-cv-1850 (N.D. Ill. June 19, 2012), arose when a *formaggiato* (cheese steward) at the titular restaurant was discovered to have poured some 25-30 ounces of free wine for one of his tables. After learning of the incident, the senior dining room manager wrote an e-mail to the restaurant's general manager, advising that he "would not be opposed to termination" of the steward for his heavy pours. The steward was then terminated. He subsequently sued the restaurant, alleging that the dining room manager's e-mail was an act of retaliation for the steward's participation in an internal discrimination investigation several months earlier. That investigation, conducted by the restaurant's own counsel, followed another employee's lawsuit alleging discriminatory conduct by the dining room manager. The steward had met with the investigating attorney for over an hour and, shortly thereafter, the restaurant had decided to settle the case against the dining room manager.

The restaurant moved for summary judgment on the steward's retaliation claim, arguing that Title VII only protects participation in official investigations and therefore that the steward's participation in the internal investigation by the restaurant's own counsel was not protected. The question before Judge Feinerman of the Northern District was therefore "whether participation in an internal investigation begun after a charge is filed with the EEOC should be treated as participation in the official investigation" which is protected by Title VII. He determined that it should, reasoning that, while the Seventh Circuit has not ruled on the issue, both the Sixth and Eleventh Circuits have adopted that position. "With no circuits taking the contrary view, and because the Sixth and Eleventh Circuits' decisions appear persuasive," the Judge concluded, "participating in an internal

investigation commenced in response to an EEOC charge or Title VII lawsuit is a statutorily protected activity.” He, therefore, permitted the steward’s retaliation claim against the restaurant to go forward.

This case should be noted by all employers within the Seventh Circuit, and those beyond. There is now persuasive precedent that where an internal investigation conducted by the employer’s own counsel comes after an EEOC or court complaint, any subsequent treatment of participating employees may be scrutinized and treated as retaliation. Employers must be extremely careful during and after an internal investigation — even though employees do not participate in an official investigation, their actions are protected by Title VII.

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