

Wal-Mart Follows Properly-Drafted Accommodation Policy, Still ends up Potentially Liable for Retaliation

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The Seventh Circuit issued a decision earlier this week which reminds employers that following a properly-drafted policy does not necessarily guarantee freedom from legal complications in all cases.

The case, *Arizanovska v. Wal-Mart Stores, Inc.*, No. 11-3387 (7th Cir. June 12, 2012), stemmed from claims filed by Svetlana Arizanovska, an overnight stocker at Wal-Mart. In late 2008, Arizanovska experienced pregnancy complications that prevented her from lifting more than 20 pounds, as her position required. She felt that Wal-Mart failed to properly accommodate her condition, and so filed an EEOC complaint. Regrettably, her pregnancy ended in miscarriage, and she subsequently dropped her complaint with the EEOC. In May 2009, however, Arizanovska learned that she was once again pregnant. Due to her prior pregnancy complications, her doctor ordered that she not lift more than 10 pounds. Arizanovska requested a position requiring no heavy lifting, but none existed. Wal-Mart, therefore, followed its written “Accommodation in Employment Policy,” which stated that employees should be placed on a temporary leave of absence when medical restrictions make work in all available positions impossible. Arizanovska subsequently filed suit against Wal-Mart, alleging that its decision to place her on leave of absence was made in retaliation for her prior EEOC complaint. The district court granted summary judgment to Wal-Mart, and Arizanovska appealed to the Seventh Circuit.

A relevant question on appeal was whether Wal-Mart’s placement of Arizanovska on temporary leave pursuant to its Accommodation in Employment Policy was a “materially adverse employment action” that could support her retaliation claim. Wal-Mart argued that the action could not be “materially adverse” because it was based on the company’s properly-drafted Accommodation policy. In other words, Wal-Mart argued that its supervisors had merely followed a policy that was drafted and applied in compliance with Title VII. “That may well be true,” the panel stated, “however, that rationale ignores the reality of the situation.” The panel found that, regardless of whether the employer was following a legally-permissible policy, the action was adverse: “Arizanovska went from a part-time employee to unpaid and temporarily unemployed ... [a]nd the mere fact that it was the result of Wal-Mart’s Accommodation Policy does not make it sting any less.” The panel reasoned that excusing a materially adverse action because it was consistent with a broader company policy would allow a company to retaliate with

impunity. “[A] company’s employment policy should not be used to shield liability in that way,” the panel concluded, and Wal-Mart’s decision was, therefore, a materially adverse employment action that may have been retaliatory, notwithstanding that it was entirely consistent with its Accommodation in Employment Policy.

This case serves as a reminder to employers that compliance with a written policy, even a properly-drafted one, does not guarantee protection against all potential claims, especially retaliation claims under Title VII. Managers and supervisors should be instructed to consider all possible legal implications when making employment decisions — they should not rely on compliance with a written policy in order to avoid all liabilities.

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