

Employee Not Subjected to “Materially Adverse” Action to Allow Retaliation Claim

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A security officer complained to his employer that he was being sexually harassed by the employee in charge of training him to use firearms. In response to the security officer’s complaints, the employer staged an internal investigation and took action to prevent any further harassment. During the same period of time, the employer investigated the security officer’s excessive use of sick leave and his failure to check in equipment. The employer also required the security officer to attend a meeting on his day off without first informing him that the subject of the meeting was his alleged sexual harassment. Additionally, the employer threatened the security officer with termination, singled him out at an employee meeting by “staring” at him, and switched the security officer from day to night shift after he requested the change. The officer resigned and then sued the employer, alleging that he was retaliated against in violation of Title VII of the Civil Rights Act of 1964, as amended. The U.S. Court of Appeals for the Second Circuit found that the officer was never subjected to “materially adverse” action that would “dissuad[e] a reasonable worker from making or supporting a charge of discrimination.” Consequently, the court rejected the officer’s retaliation claim. Specifically, the court found that the investigations into the officer’s sick leave and misuse of equipment were warranted and were not disciplinary in nature. Additionally, requiring the officer to attend a meeting concerning his own sexual harassment complaints is not something that would dissuade a worker from making or supporting a charge. Finally, a shift change requested by the employee himself is not an adverse action, and without more, personality conflicts and verbal threats are “trivial harms” that also do not constitute materially adverse actions. While the employee’s retaliation claim failed in this case, employers must continue to ensure that an employee never becomes the target of adverse action because he or she has filed complaints of discrimination or harassment.

Tepperwien v. Entergy Nuclear Operations, Inc., Case No. 10-1425 (2nd Cir. Oct. 31, 2011)

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Topics

Sexual Harassment, Retaliation, Title VII