

Employee's Complaint About Another Employee's "Imprudent" Remark Insufficient to Support Retaliation Claim

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At a company dinner, a supervisor commented to a young male employee that she preferred younger men and had engaged in multiple workplace relationships. A vice president of the company learned of the supervisor's comments and reported them to management as sexual harassment in violation of Title VII of the Civil Rights Act of 1964, as amended (Title VII). At the same time, he reported that the same supervisor was racially discriminating against a subordinate whom he believed she had treated too harshly. The vice president was subsequently fired due to his inadequate work performance. He then sued the employer alleging that he was fired in retaliation for opposing the supervisor's sexual and racial harassment of other employees in violation of Title VII and Section 1981. The U.S. Court of Appeals for the Seventh Circuit rejected the vice president's claim. The court found that the vice president did not engage in "protected activity" when he reported the supervisor's purported sexual harassment because he could not have reasonably believed that the supervisor's behavior, "a single instance of sexually charged remarks," amounted to sexual harassment. The court reasoned that while the supervisor's remarks were "imprudent," they were "relatively tame." Although the court did find that the vice president engaged in protected activity when he reported what he believed to be racial discrimination, the vice president did not present evidence to rebut the employer's legitimate reason for terminating him, in that his work performance was not adequate. The court consequently dismissed his case. Employers must be certain that adverse action is never taken against an employee for having opposed what he or she reasonably believed to be unlawful discrimination or harassment.

O'Leary v. Accretive Health, Inc., No. 10-1418 (7th Cir. Oct. 19, 2011)

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Topics

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