

Employee's Dishonesty Outweighs Employee's Complaints of Harassment in Termination/Retaliation Suit

1 min read

Jan 3, 2014

A hospital employee was terminated for dishonesty and causing a workplace disruption. She had previously posted comments on her Facebook page alleging that her supervising physician inappropriately touched her and was paying employees for time they did not work. The accused physician saw the posts and notified hospital management. The employee was asked about the posts, and three times denied that she had authored the posts. The hospital investigated the allegations, including the allegations concerning the touchings by the supervisor, and during this time, the employee told her co-workers that she believed the physician had destroyed evidence of the extra pay he had given to the employees. Later, the employee admitted that she had, in fact, authored the Facebook posts and was terminated for dishonesty and causing a workplace disruption.

The employee subsequently sued the hospital claiming, among other things, that she was terminated in retaliation for complaining of sexual harassment in the form of the Facebook posts. The U.S. Court of Appeals for the 10th Circuit affirmed summary judgment in favor of the employer, finding there was no evidence the hospital engaged in retaliation. First, the hospital had a flexible harassment reporting system the employee did not use and the hospital found out about the posts only because the accused supervisor reported the posts. Second, it was undisputed that the employee lied and initially disclaimed authoring the posts and falsely accused the supervisor of destroying evidence, and that these acts — dishonesty and disruptive behavior — were valid grounds for termination.

In this case, the employer was ultimately able to rely upon its policies in support of the termination, as well as the employee's failure to comply with those policies. This case serves as a reminder of the importance of the existence, implementation, and enforcement of such policies. For more information read *Debord v. Mercy Health System of Kansas, Inc.*, No. 12-3072 (10th Cir. November 26, 2013).

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Topics

Facebook, Sexual Harassment, Tenth Circuit Court Of Appeals, Retaliation, Complaints