11th Circuit: Exposure to Subjectively Unpleasant Weather Conditions and Deprivation of Office Amenities is not Adverse Employment Action

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Henry McCone worked for several years as a non-driving customer service associate. His job duties involved opening received mail and preparing outgoing mail. Pitney Bowes transferred him to a position requiring him to drive correspondence and files between sites in the Orlando area. The result was McCone had to endure unfavorable weather conditions and lost regular access to office amenities, such as air-conditioning, restrooms, a microwave oven, and a refrigerator. Two women who also served as customer service associates were neither trained nor required to work as a driver.

McCone received a negative performance evaluation after complaining of the reassignment and therefore sued Pitney Bowes for gender discrimination under Title VII, which requires a plaintiff to prove he suffered an adverse employment action. McCone alleged the adverse weather and lost office amenities constituted an adverse employment action. The district court disagreed and dismissed his lawsuit with prejudice. McCone appealed but the Eleventh Circuit affirmed.

The appeals court held, as a matter of law, that the changed conditions were not actionable adverse changes under Title VII because a reasonable person would consider them ordinary tribulations of the workplace. The appeals court noted the alleged negative review did not save his claim because he could not allege this review lead to any negative consequences.

This decision, *McCone v. Pitney Bowes, Inc.*, No. 14-11119 (11th Cir. September 5, 2014), confirms that employers retain flexibility in staffing decisions, but implies that a transfer to a less desirable position may lead to potential claims which will survive a motion to dismiss if the employee does not succeed at the new position and is disciplined as a result. Employers should carefully evaluate and document the circumstances any such transfers to ensure that, if the employee does not succeed in the new position, then the employer will be posed to eliminate any such claims on summary judgment.

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