

Workplace Retaliation: Court Slashes \$366M Jury Verdict

March 05, 2024

This significant workplace retaliation case, *Harris v. FedEx*, underscores the critical importance of conducting thorough investigations into any allegations of discrimination or harassment by employees. Thorough documentation of the investigation process and issuance of findings in accordance with the evidence obtained is essential and paramount not only in refuting claims of retaliatory actions but also in shielding your organization from the risk of significant punitive damages.

Workplace Discrimination Allegations and FedEx's Response

Plaintiff, a former sales manager with FedEx, filed a lawsuit pursuant to 42 U.S.C. § 1981 (Section 1981) and Title VII of the Civil Rights Act of 1964 (Title VII). She alleged that her white supervisor discriminated against her based on race, African American, and was terminated by FedEx for having complained of the alleged discriminatory treatment. Prior to her termination, Plaintiff filed a complaint of discrimination against her supervisor three times, each following a notice of performance concerns. FedEx fully investigated each complaint and found no evidence of discrimination. Following the third complaint, Plaintiff's supervisor recommended Plaintiff be terminated for continued poor performance. After reviewing Plaintiff's performance history, the recommendation was approved by the Department of Human Resources and Plaintiff was terminated.

Jury Verdict of Workplace Retaliation and Appeal Outcomes

While the jury did not find in favor of Plaintiff on her discrimination claim, they did determine that Plaintiff was fired in retaliation for having complained of the purported discrimination. The jury awarded Plaintiff \$120,000 for past pain and suffering, more than \$1 million for future mental anguish, and a whopping \$365 million in punitive damages. On appeal, the 5th Circuit reduced the total award to \$248,620, significantly decreasing the compensatory damages award and dismissing the punitive damages entirely.

Legal Considerations and Court Findings

First, the court considered the validity of a contractual agreement in play that shortened the time in which Plaintiff could file suit to six (6) months as it related to the Plaintiff's Section 1981 claims. Unlike Title VII, Congress did not create a statute of limitations specifically for Section 1981, and thus, the limitations period is subject to state law. On Motion, while the district court found the provision applicable to claims arising out of the employment contract, that court determined the provision inapplicable to all discrimination and retaliation claims. The 5th Circuit reversed the finding that the provision was applicable to Plaintiff's Section 1981 claims,

and because Plaintiff filed her claim 16 months after she was fired, those claims were time-barred, leaving only Plaintiff's Title VII claim viable. Notably, the court further opined that a six (6) month limitation period was "reasonable."

This finding was significant because, unlike Section 1981, there is a cap for Title VII compensatory damages of \$300,000, thus invalidating the jury's \$1.12 million award. Going one step further, the court deemed that even \$300,000 was excessive and reduced the compensatory damages award to \$248,620 based on Plaintiff's evidence of emotional damages compared to 5th Circuit precedent involving analogous cases. Next, the court considered whether the Plaintiff presented evidence to support the jury's award of punitive damages. The court discussed the standard for awarding punitive damages against an employer in Title VII actions, noting that it is the employer's subjective intent that matters. Title VII permits punitive damages only upon proof that an employer acted "with malice or with reckless indifference" to an employee's federally protected rights. 42 U.S.C. § 1981a(b)(1). The court pointed out that such is a formidable burden. For a jury to issue a finding of punitive damages, it would need to find that an employer took adverse action against an employee even in the face of perceived risk that such action would violate federal law. The court further explained that even if a particular agent acts with malice or reckless indifference, an employer may avoid vicarious punitive damages if it can show that the agent made a good faith effort to comply with Title VII. *E.E.O.C. v. Boh Bros. Cons. Co.*, 731 F.3d 444, 467 (5th Cir. 2013).

Employer Compliance and Procedural Insights

The court deemed that the evidence supported the supervisor's subjective belief that Plaintiff should be disciplined for insubordination and poor performance. Thus, there was no malice or reckless indifference on the part of the supervisor. Further, the court noted that even if the supervisor had acted with malice, FedEx could not be cited for punitive damages because the company made good-faith efforts to comply with Title VII. Notable to the court were the three in-depth investigations conducted after each complaint filed by the employee.

The Takeaway

This case highlights the importance of conducting full and thorough investigations of any allegations of discriminatory treatment or workplace retaliation. Documentation of evidence collected in support of an investigator's findings is key to successfully defeating claims of retaliation and protecting employers from significant punitive damages awards.

Employers should have procedures in place to investigate complaints and follow those procedures when complaints occur. With respect to time limitation periods in contracts, employers should note that state law will come into play and this holding may not be applicable in all jurisdictions. Any employer needing to develop these legally sufficient procedures and contractual provisions should consult with legal counsel.

Subscribe for Updates

Subscribe to receive emails from us regarding timely legal developments and events in your areas of interest.

[sign up + subscribe >](#)

Related people

Melissa Losch