

**Retaliatory Co-Worker Harassment Under Title VII**

**April 2006**

In one of his final decisions before being elevated to the top court, Judge, now Supreme Court Justice, Samuel Alito wrote an opinion in which the Third Circuit joined a number of other Circuits holding that co-worker retaliation against complainants filing charges of sexual harassment can expose an employer to liability under Title VII. Jensen v. Potter, 435 F.3d 444 (3<sup>rd</sup> Cir. 2006).

The case was brought by a female letter carrier who claimed she was sexually harassed by her supervisor. After an investigation the supervisor was terminated. Following the termination, the letter carrier's co-workers began a campaign of retaliatory harassment against her which included offensive comments, driving carts at a rapid pace toward her, and vandalizing her car while parked on post office property. Plaintiff's repeated complaints to management fell on deaf ears until a new supervisor finally took appropriate action some 19 months after the abuse began.

In reversing the lower court, the Court of Appeals found that Title VII imposes liability on employers when co-workers, as opposed to supervisors, retaliate against a complainant by creating a hostile work environment, and the employer knew or should have known about the retaliation and failed to take timely and appropriate action. Here the court held that the plaintiff proved the elements of hostile work environment, retaliation, and employer liability even though the unlawful acts were committed by non-supervisory employees. The employer's knowledge of the illegal conduct coupled with its failure to stop it sealed the case in plaintiff's favor.

This case illustrates the need to be aware of non-supervisory employee misconduct, including retaliatory actions, so that prompt and effective measures can be taken to eliminate unlawful behavior before it leads to employer liability. The Third Circuit's reasoning mirrors that of the Second Circuit covering Connecticut, and the lessons learned apply equally.

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