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Seventh Circuit Addresses Employer Liability for Coworker and Supervisor Harassment and Challenges in Establishing Claims For Retaliation, Defamation, and IIED

On April 7, 2023, the Seventh Circuit Court of Appeals affirmed summary judgment in favor of an employer in connection with claims of hostile work environment under Title VII of the Civil Rights Act of 1964 (Title VII), Pub.L. No. 88-352, Title VII, 78 Stat. 253; retaliation under the Family and Medical Leave Act of 1993 (FMLA), Pub.L. No. 103-3, 107 Stat. 6, and the Americans with Disabilities Act of 1990 (ADA), Pub.L. No. 101-336, 104 Stat. 327; and state law defamation and intentional infliction of emotional distress (IIED) brought by a former employee against Northwestern University Feinberg School of Medicine and her supervisor. *Trahanas v. Northwestern University,* 64 F.4th 842 (7th Cir. 2023).

Background

In June 2012, Trahanas began working as a "Research Technologist II" in Dr. Steven Schwulst's laboratory at the Northwestern University Feinberg School of Medicine. She assisted Schwulst in examining traumatic brain injuries by conducting research experiments on mice. 64 F.4th at 850. Initially, she and Schwulst got along, but in fall 2012, Schwulst allegedly began making a variety of inappropriate comments to Trahanas regarding her mental health and perceived (albeit incorrect) sexual orientation. The alleged comments included "Diane is off her meds," "Diane needs psychiatric help," women who exercise too much like Trahanas look "manly" and are "lesbians," and referring to Trahanas as a "softball player." *Id.*

Trahanas also alleged that her non-supervisor lab coworkers made inappropriate comments to her, including "[s]top messing things up," saying she was "doing everything wrong" and telling her to "take [her] meds." *Id.*

Despite her alleged working conditions, Trahanas performed well at her job. She planned to apply to medical school, and Schwulst agreed to write her a letter of reference. *Id.*

On February 16, 2015, Trahanas failed to report to work without providing prior notice to Northwestern or Schwulst. She ultimately was approved for 12 weeks of leave under the FMLA related to ADHD, depression, and anxiety. 64 F.4th at 851. While Trahanas was on leave, Schwulst noticed a serious oversight Trahanas made in her work prior to her leave. As a result, he formally withdrew his letter of reference for her medical school applications. Trahanas never returned to work, and Northwestern terminated her employment. *Id.*

Procedural History

Trahanas sued Northwestern and Schwulst, asserting hostile work environment claims under Title VII, retaliation under the FMLA and the ADA, and state law claims of defamation and IIED. The U.S. District Court for the Northern District of Illinois granted summary judgment in favor of Northwestern and Schwulst. In summary as to the main claims, the district court found that Northwestern could not be held liable for a hostile work environment under Title VII because Trahanas did not experience an adverse employment action as required to establish employer liability for supervisor harassment and because Trahanas failed to report the alleged harassment. It also found that Northwestern and Schwulst could not be held liable for FMLA or ADA retaliation as Trahanas lacked standing for failing to show she suffered an injury. Trahanas appealed.

The Seventh's Circuit's Decision

The Seventh Circuit upheld the decision and reasoning of the district court.

1. Hostile Work Environment — Supervisor Liability

Focusing first on Trahanas's hostile work environment claims, the Seventh Circuit noted that the standards for liability are different for supervisors and coworkers. Northwestern could be held liable for Schwulst's alleged harassment as a supervisor only if the alleged harassment resulted in a "tangible employment action" or a "significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." 64 F.4th at 853, citing *Vance v. Ball State University,* 570 U.S. 421, 186 L.Ed.2d 565, 133 S.Ct. 2434, 2443 (2013). The Seventh Circuit held that Schwulst's conduct did not result in such a tangible employment action. Specifically, he played no role in her termination. Rather, the termination resulted due to her voluntary refusal to return to work following a leave.

Because Schwulst's conduct did not result in a tangible employment action, the Seventh Circuit found that Northwestern was able to raise the *Faragher-Ellerth* (*see Faragher v. City of Boca Raton,* 524 U.S. 775, 141 L.Ed.2d 662, 118 S.Ct. 2275 (1998); *Burlington Industries, Inc. v. Ellerth,* 524 U.S. 742, 141 L.Ed.2d 633, 118 S.Ct. 2257 (1998)) affirmative defense to liability for supervisor harassment by showing: "(1) it exercised reasonable care to prevent and correct promptly any sexually harassing behavior"; and "(2) the plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to otherwise avoid harm." 64 F.4th at 854, citing *Hunt v. Wal-Mart Stores, Inc.,* 931 F.3d 624, 628 (7th Cir. 2019).

The Seventh Circuit reiterated that "[p]revention [of harassment] can involve proactive steps such as constructing a reporting system for instances of sexual harassment" and that Northwestern maintained a robust anti-harassment policy providing instructions and multiple avenues for filing complaints that was sufficient to satisfy the first *Faragher-Ellerth* prong. 64 F.4th at 854. Next, as to the second prong, the Seventh Circuit found that Trahanas unreasonably failed to take advantage of the anti-harassment policy when, despite having knowledge of the policy, she did not report Schwulst's comments to HR or any other administration employees, despite communicating frequently with them. While Trahanas claimed that she was concerned about retaliation in reporting Schwulst, the Seventh Circuit affirmed that "fear of unpleasantness cannot excuse [Trahanas] from using the company's complaint mechanisms." *Id.,* citing *Montgomery v. American Airlines, Inc.,* 626 F.3d 382, 391 – 392 (7th Cir. 2010).

2. Hostile Work Environment — Coworker Liability

As to Trahanas's coworker harassment claims, the Seventh Circuit reiterated that an employer is liable for such harassment only "when the employee shows that h[er] employer has been negligent either in discovering or remedying the harassment." 64 F.4th at 854, citing *Paschall v. Tube Processing Corp.,* 28 F.4th 805, 813 (7th Cir. 2022). The Seventh Circuit held that "Northwestern took reasonable steps to discover employee acts of harassment by implementing an anti-harassment policy and establishing complaint mechanisms," and also that "without knowledge of what Trahanas's coworkers were doing, Northwestern cannot be held liable for failing to rectify the problem." 64 F.4th at 855.

3. FMLA and ADA Retaliation

Regarding Trahanas's FMLA and ADA retaliation claims, the Seventh Circuit held that she could not establish that her FMLA leave "played a motivating factor in Northwestern's decision to terminate her employment." 64 F.4th at 856. Critically, Northwestern held her position open for her; she could have chosen to return to work following her leave. Northwestern terminated her employment only when she voluntarily chose to neither return nor continue her leave.

As to Trahanas's retaliation claim against Schwulst, the Seventh Circuit held that she failed to show she suffered damages from his alleged retaliation, withdrawing his letter of reference in support of her medical school applications. The evidence showed that all of her applications were either rejected or considered withdrawn before the date when Schwulst indicated he could no longer support her applications. *Id.*

4. Defamation and IIED

As to the remaining state law claims, the Seventh Circuit found that Trahanas failed to meet her burden. In short, for the defamation claim, the Seventh Circuit held that Schwulst merely stating he could not support Trahanas's candidacy for medical school, without more details, constituted a mere opinion devoid of statements that could be verified as true or false when one of the requirements of a defamation claim is that the alleged statement is false. 64 F.4th at 859. For the IIED claim, the Seventh Circuit found that Trahanas could not meet the high evidentiary burden of the claim, and further affirmed that " 'everyday job stresses resulting from discipline, personality conflicts, job transfers or even terminations' do not give rise to emotional distress claims, otherwise 'nearly every employee would have a cause of action.' " 64 F.4th at 860, citing *Naeem v. McKesson Drug Co.,* 444 F.3d 593, 605 (7th Cir. 2006).

Key Takeaways

Trahanas serves as an important reminder of the different standards to establish employer liability for supervisor and coworker harassment and the affirmative defense available to employers when there is no tangible employment action.

As to both supervisor and coworker harassment, *Trahanas* reiterates the important role played by clear, detailed anti-harassment policies as defenses against such claims and that courts are likely to find that employees must take advantage of these policies, even if apprehensive about retaliation, for their claims to potentially survive summary judgment.

As to FMLA and ADA retaliation, *Trahanas* is clear that if an employee is terminated as a result of his or her failure to return to work or to extend a medically related leave, the employee may likely be unable to claim that his or her termination was motivated by leave taken under either Act.

Finally, *Trahanas* confirms that defamation claims related to letters of reference, or their withdrawal, hinge on whether statements verifiable as true or false are included, and that as upsetting as employment termination may be, employers are unlikely to be held liable for intentional infliction of emotional distress in connection with an employment termination.

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