

Associational Discrimination Claims Are on the Rise

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Courts recently have interpreted anti-discrimination laws to provide statutory protection *for workers who are not members of a particular protected category, but who have a relationship with "protected" persons*. By doing so, courts have extended greatly the scope of federal anti-discrimination laws.

This trend was explained by the Court of Appeals for the Second Circuit, in New York, in a case involving the allegations of a Caucasian assistant basketball coach who had claimed he was discharged because he married an African-American woman. The Court held, "[w]here an employee is subjected to adverse action because an employer disapproves of interracial association, the employee suffers discrimination because of the employee's own race."

In a Sixth Circuit decision, three Caucasian women sued their employer, alleging they were discriminated against based upon their friendship with, and advocacy for, African-American co-workers. Examples of the allegedly racially discriminatory incidents included: overhearing co-workers using racial slurs and telling racist jokes, being told "missed you ladies at the [Ku Klux] Klan meeting last night", viewing racial graffiti in various places in the plant, being "snubbed" because of the employee's association with African-American employees, receiving less desirable work assignments, and not being considered for promotions.

The Cincinnati Court's decision is noteworthy for two reasons. First, the Court held, "If a plaintiff shows that 1) she was discriminated against at work 2) because she associated with members of a protected class, then the degree of the association is irrelevant." In other words, the Court did not require a significant degree of association to state a claim of associational discrimination under Title VII of the 1964 Civil Rights Act. Second, the Court held, "[O]nly harassment that specifically targeted those who associated with and advocated for African-Americans will result in an actionable hostile work environment claim for such individuals." While only one of the plaintiffs could satisfy this standard, the path for future claimants has been mapped.

Courts also have recognized associational discrimination claims as they relate to the disabilities of loved ones. In a decision by the federal appeals court in Chicago, the plaintiff alleged that her employer violated the Americans with Disabilities Act ("ADA") when it fired her in order to avoid having to continue to pay for the substantial medical costs that were being incurred by her husband under the company's self-insured health insurance plan. Recognizing this expanded view of federal anti-discrimination laws, the Seventh Circuit overruled the District Court's grant of summary judgment in favor of the employer, holding that "an employee, fired because her spouse has a disability that is costly to the employer (i.e., he is covered by the company's health plan) is within the intended scope of the 'associational discrimination' section of the ADA." A jury was allowed to consider the plaintiff's claim because she had established that direct evidence of "associational discrimination" may have motivated the employer's decision to fire her.

In contrast, other courts have been reluctant to apply associational discrimination claims in the context of sex discrimination. For example, a food and beverage services manager sued his employer for associational discrimination under Title VII, claiming he was fired because he was male and he defended *his* girlfriend, a co-worker, from alleged sexual harassment. In other words, he was not a member of the protected class (i.e., women who were being harassed), but he sought to establish a *prima facie* case of sex discrimination through his association with *his* girlfriend. The federal District Court in the Eastern District of Pennsylvania granted summary judgment to the employer as to the associational discrimination claim, finding there was no evidence that the plaintiff was fired because of his gender. Significantly, the court explained that "being in a relationship with a person of a different gender who may have been subjected to harassment is not sufficient" to establish associational bias.

Class-based associational discrimination claims can be costly. The Equal Employment Opportunity Commission recently settled several associational discrimination claims. In one proceeding, the Commission alleged that Caucasian employees were harassed because of their association with African-American co-workers and family members, including being referred to as "n- r lovers" and "race traitors" by Caucasian managers. The EEOC further alleged African-American employees were terminated because

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of their race and female workers were subject to a sex-based hostile work environment. In June 2009, the EEOC settled the lawsuit for \$500,000 and non-monetary relief.

This trend is yet another reminder to employers and their carriers that discriminatory conduct is costly, even when directed toward employees who seemingly do not meet a protected category, as the scope of protection continues to grow. Comprehensive and accessible anti-harassment policies and regular employee anti-harassment and discrimination prevention training are as fundamental as ever.

Related Links

- Title VII Associational Discrimination Claim Requires Proof Harassment was "Severe or Pervasive"

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