

# Evidence Sufficient for Jury to Find Employer Retaliated against Employee, Tennessee High Court Rules

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Practices

Litigation

A university's former maintenance employee presented material evidence for a jury to infer that his supervisor knew he had filed a lawsuit for employment discrimination when she engaged in retaliatory conduct, a unanimous Tennessee Supreme Court has held, reinstating a jury verdict for the employee. *Ferguson v. Middle Tennessee State University*, No. M2012-00890-SC-R11-CV (Oct. 29, 2014). The Court also remanded the case to the Court of Appeals for a review of the university's argument that the \$3 million compensatory damages award to the employee was excessive, given that the lower court did not review the issue of damages.

## Facts

Jim Ferguson, a Japanese-American, was a maintenance worker for the Middle Tennessee State University (MTSU) from 1987 to 2003. Ferguson sustained injuries in the workplace for which he underwent surgeries and received medical care. He was placed on medical restrictions that limited overhead work and lifting, but his supervisor, Dana Byrd, directed him to do work that exceeded his restrictions despite his complaints to her and to MTSU's Human Resources Department.

Ferguson filed a suit in 2003 against his employer alleging race and national origin discrimination and that he was subjected to a hostile workplace. Byrd continued to require him to perform tasks outside his medical restrictions and even increased his work assignments. Ferguson left MTSU in December of 2003.

In 2004, Ferguson filed another lawsuit against MTSU alleging retaliation under Title VII of the Civil Rights Act of 1964 ("Title VII") and the Tennessee Human Rights Act ("THRA"). This lawsuit was consolidated with the discrimination suit he filed previously. In 2008, he filed an amended complaint that included the previously filed discrimination and retaliation claims and added a claim for malicious harassment under the THRA.

The trial court granted MTSU's motion for a directed verdict as to Ferguson's hostile work environment claim. The jury found in favor MTSU on Ferguson's disparate treatment and malicious harassment claims. It also found the university retaliated against Ferguson in violation of Title VII and the THRA and awarded the employee \$3 million in compensatory damages.

Filing a motion for a new trial or a remittitur, MTSU contended Ferguson failed to show Byrd knew of his protected activity and, therefore, did not retaliate against him within the meaning of Title VII and the THRA. The trial court rejected this contention and ruled there was substantial evidence supporting the jury verdict.

The Court of Appeals reversed the trial court's decision. While acknowledging it was undisputed that some in MTSU's administration knew of Ferguson's lawsuit, the Court of Appeals rejected the view that general corporate knowledge of an employee's protected activity is sufficient to establish the knowledge requirement of a *prima facie* case of retaliation. It concluded Ferguson failed to submit to the jury material evidence showing that Byrd personally knew of his lawsuit at the time she took adverse action against him.

## Retaliation

Both Title VII and the THRA prohibit employers from retaliating against employees for engaging in

protected activity, such as complaining about discriminatory work conditions or filing a lawsuit. To prevail on his retaliation claim, Ferguson must prove he engaged in protected activity, the employer knew about his protected activity, the employer subsequently took a materially adverse action against him, and a causal connection between his protected activity and the resulting adverse action.

### Jury Verdict Reinstated

Noting its focus in this case is the knowledge requirement (i.e., the employer knew about Ferguson's protected activity), the Tennessee Supreme Court determined the jury could infer based on the evidence that Byrd knew at some point that Ferguson had filed a lawsuit against the university. It said the jury could have found important the closeness in time between Ferguson filing his employment discrimination lawsuit and the adverse actions taken against him and the pattern of increased work assignments and retaliatory conduct after the filing of the lawsuit. Further, the Court found that the Court of Appeals erred in substituting its judgment for that of the jury, which had the opportunity to evaluate the credibility of witnesses.

Accordingly, it ruled that there was material evidence to support the jury's finding of retaliation, reversed the decision of the Court of Appeals, and reinstate the jury verdict.

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We see again and again that employers who successfully defend discrimination claims can still be subject to liability for retaliation. It is critical for employers to make sure they have strong anti-retaliation policies that are consistently enforced. Moreover, employee relations best practices include Human Resources review of all disciplinary actions and terminations. Finally, if an employee who has engaged in protected conduct is to be disciplined or terminated, seeking legal advice before the discipline or termination is a good idea to help manage any risk.

If you have any questions about this or other workplace developments, please contact the Jackson Lewis attorney with whom you regularly work.

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