

HR Weekly Podcast August 19, 2015

Today is Wednesday, August 19, 2015. Welcome to the HR weekly podcast from the Division of State Human Resources. Today's topic concerns a Fourth Circuit decision regarding a Title VII Harassment and Retaliation claim in the case of *Boyer-Liberto v. Fontainebleau Corporation*.

Ms. Reya Boyer-Liberto was employed as a cocktail waitress at the Clarion Resort Fontainebleau Hotel in Ocean City, Maryland. In September 2010, Ms. Boyer-Liberto got into a work-related argument with the hotel's Caucasian restaurant manager, Ms. Trudi Clubb. Ms. Boyer-Liberto, who is African-American, claimed in her lawsuit that Ms. Clubb called her a racially derogatory term twice within a 24-hour period. Subsequently, Ms. Boyer-Liberto complained to the hotel's Human Resources Director that she had been racially harassed by Ms. Clubb. Ms. Clubb was issued a written reprimand for the incident the following day. Several days following the incident Ms. Boyer-Liberto was terminated for poor performance.

After filing a discrimination claim with the Equal Employment Opportunity Commission and exhausting administrative remedies, Ms. Boyer-Liberto filed a lawsuit in U.S. District Court asserting hostile work environment and retaliation claims. The hotel filed for a pretrial dismissal before the Court arguing that Ms. Boyer-Liberto's complaint was not protected activity because she could not reasonably have believed that Ms. Clubb's conduct was sufficiently severe or pervasive to engender a hostile work environment. The District Court granted the hotel's motion for summary judgement citing that the manager's conduct "was not so severe or pervasive as to create a hostile work environment or to instill a reasonable belief in Boyer-Liberto, such as would protect her from retaliation, that she had been unlawfully harassed." After appealing to the Fourth Circuit, three judges affirmed the trial court's decision. Ms. Boyer-Liberto then appealed to the full Fourth Circuit.

In May 2015, the full Fourth Circuit reversed the decision and the case was remanded for a jury trial. The Court ruled that a reasonable jury could find that Ms. Clubb's two uses of the racially derogatory epithet were severe enough to engender a hostile work environment. The Court further ruled that, "an isolated incident of harassment, if extremely serious, can create a hostile work environment" and that a jury could determine that Ms. Clubb's conduct was severe enough "to give a reasonable belief that a hostile environment, although not fully formed, was in progress." Concerning Ms. Boyer-Liberto's retaliation claim, the Court held that, "an employee is protected from retaliation when she reports an isolated incident of harassment that is physically threatening or humiliating, even if a hostile work environment is not engendered by that incident alone."

The Fourth Circuit's broader endorsement of Title VII harassment and retaliation claims, based upon the two utterances of a racially derogatory term, could have a significant

impact for employers in states that comprise the Fourth Circuit which includes South Carolina. As such, the Boyer-Liberto decision may be an indicator of the Fourth Circuit's increasing sympathy towards Title VII plaintiffs.

This case stresses the fact that complaints of harassment should be investigated promptly and taken seriously. Moreover, employers should be careful that actions taken, concerning an employee who files a complaint, do not appear retaliatory.

Thank you.