

Internal Investigations Can Be Crucial To Defense Against Retaliation Claims

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It will come as no surprise to many employers that retaliation charges under Title VII and similar employment laws are, in many instances, more challenging to prevent and defend than discrimination claims. So there is comfort to be found in a pair of rulings from the Seventh Circuit Court of Appeals today, affirming that an employer's investigation into alleged workplace misconduct can serve to stave off liability in the event of a retaliation lawsuit.

In [Vaughn v. Vilsack](#), the Court affirmed summary judgment for the Department of Agriculture on a retaliation claim by an employee whose history included multiple EEO claims and at least one employment discrimination lawsuit that had resulted in a settlement. The employee, however, had been involved in a romantic relationship with a female co-worker and after the relationship ended the co-worker raised complaints that the Plaintiff was subjecting her to harassment. The employer investigated and took action to ensure the two no longer worked together, and eventually settled a claim by the female co-worker that included an agreement to separate the two in the workplace. Plaintiff sued, alleging retaliation based upon, among other things, an allegation that he was being denied overtime. The Court affirmed summary judgment for the employer, agreeing that the Plaintiff failed to establish a prima facie case of retaliation but that even if he had, the employer's decisions were not a pretext for retaliation. Of note for employers who are faced with a similar situation of allegations brought by one co-worker against another, the Court stated that an employee who sexually harasses a co-worker "cannot be meeting his employer's legitimate expectations by any stretch of the imagination."

In [Collins v. American Red Cross](#), another Seventh Circuit panel upheld summary judgment in favor of an employer who discharged an employee for workplace misconduct and then found itself defending a race discrimination and retaliation lawsuit. While the Court found fault with the employer's written report of its investigation into complaints by co-workers about the Plaintiff, the Court nevertheless determined that Plaintiff's claims could not survive summary judgment. Even if an employer's investigative report is "sloppy" or "mistaken," the Court noted, "Title VII does not forbid sloppy, mistaken, or unfair terminations; it forbids discriminatory or retaliatory terminations." The Plaintiff had shown, at most, that the conclusions of the investigation were wrong, but only provided speculation that the conclusions were wrong because the Plaintiff previously had filed an EEOC charge a year earlier. Without a causal connection, her retaliation claim failed.

These two opinions (from a combined six appellate judges) illustrate yet again that when faced with an internal complaint, employers should investigate and take appropriate action, not only to correct the situation but also to lay the groundwork for a defense should a Charge or lawsuit come to pass.

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