

Not All Good Deeds Are Punished: A Paid Suspension Is Not An Adverse Employment Action For Title VII

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Chalk up a victory for logic. Addressing an issue of first impression, the federal Third Circuit Court of Appeals (which covers Delaware, New Jersey and Pennsylvania), recently held that an employee's **suspension with pay** is not an adverse employment action for purposes of Title VII. In doing so, the Third Circuit has joined several of its sister Circuits across the country, including the Second, Fourth, Fifth, Sixth and Eighth Circuits. The case, *Jones v. Southeastern Pennsylvania Transportation Authority* involved an employee who was suspended with pay while her employer investigated allegations that she had submitted fraudulent timesheets. She didn't suffer any loss of income or compensation. She was off work *with pay*.

Nevertheless, the employee sued her employer claiming, among other things, sex discrimination and sexual harassment. In evaluating whether or not the paid suspension could be considered discriminatory, the Third Circuit observed that Title VII prohibits discrimination with respect to decisions concerning hiring, firing, compensation and other terms and conditions of employment. Because suspending an employee *with pay* does not neatly fall within these categories, the court concluded that such a paid suspension could not be an adverse employment action for Title VII purposes. The lack of an adverse employment action similarly negated the plaintiff's sexual harassment claim. All in all, the decision is good for employers and ensures that those who do go the extra mile to *suspend with pay* do not get burned for doing so. Although the decision does not guarantee that an employee will not sue over a paid suspension, it does effectively curtail a Title VII claim in this context – and particularly in the Circuits that have adopted this rule. And doing so makes perfect sense: it smacks of unfairness that a company which pays an employee on leave might *then* be forced to also pay to fend off a discrimination or harassment claim filed by the very same employee who was on the paid suspension. Practically, what does this case mean for employers? They have a choice to make: (a) pay the suspended employee and eliminate the potential for a discrimination claim; or (b) choose not to pay the suspended employee and accept the risk that the employee – and a court – would find the lack of payment as an adverse employment action. Whatever choice employers make, they also must make certain they handle similar decisions uniformly and not in a way that would be perceived as discriminatory: selectively suspending some employees with pay but not others (i.e. those who are not be in protected classes) would only create a bigger problem. As with everything in the employment arena, employers constantly must evaluate the risks and benefits of their individual actions, while simultaneously keeping the big picture in mind.