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# Employers Need Not Tolerate HR Professionals Who Encourage Coworkers To File Discrimination Suits

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**Richard P.  
Winegardner**  
Partner

In an important victory for employers, the U.S. Court of Appeals for the 11th Circuit sitting *en banc* determined that an employer could lawfully discharge an HR manager who secretly solicited a fellow team member to file a lawsuit against it.

The solicitation, which would very likely be lawful if it was made by a non-HR employee, ran afoul of the rule (applicable in the 11th Circuit) that an employee's right to oppose discriminatory acts does not give them license to engage in acts that so interfere with their performance of their job that it renders the employee ineffective in the position for which they were employed.

Here, in [Gogel v. Kia Motors Mfg of Georgia, Inc.](#), the terminated employee's job was to investigate complaints of discrimination and try to internally resolve conflicts (and thereby avoid third-party resolution mechanisms). By surreptitiously recruiting another employee to sue the employer, the HR manager acted in contradiction of the very obligations owed to the employer. As this rendered the manager ineffective for their position, the court found the employer did not violate Title VII's anti-retaliation provisions when it terminated the manager for the disloyal acts.

While this decision gives companies (in the 11th Circuit at least, which covers Alabama, Florida and Georgia) an important tool for dealing with rogue HR employees, employers should nevertheless be cautious before terminating

anyone who is helping fellow workers assert discrimination claims.

First, the ruling does not preclude HR professionals from asserting their own claims of discrimination. It also does not allow an employer to take adverse action against the HR employee for internally advocating on behalf of an employee who is complaining. Rather, it applies in those limited circumstances when the HR person not only ignores their responsibilities to investigate and try to resolve disputes internally, but goes so far to encourage the worker to skip those internal steps and go outside the workplace to seek redress.

Given the limited circumstances outlined in the decision in which an employer can lawfully punish an HR professional for assisting coworkers in suing the employer, it is imperative that companies consider seeking legal counsel before disciplining or terminating HR employees believed to be secretly encouraging others to sue.