

Straying From Past Practice In Investigation Raises Retaliation Risk

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A recent 7th Circuit case demonstrates the importance of carefully designing workplace investigations to account for a variety of potential claims. In *Hobgood v. Illinois Gaming Board*, a gaming board employee filed suit against his employer alleging unlawful retaliation in violation of Title VII and the First Amendment. The employee was terminated for helping his coworker organize and research a suit against the gaming board, citing widespread corruption in its hiring policies. Additionally, the employee supplied two confidential documents supporting the coworker's claims. The coworker's lawsuit exposed the confidential documents and alerted the board's top executives that the employee was assisting his coworker with the lawsuit; the board initiated an internal investigation of the employee to determine whether he engaged in misconduct warranting termination.

The breadth of the internal investigation was found to deviate from the employer's usual policies, and presented a "convincing mosaic" of evidence that "the gaming board was only interested in seeing [the employee] punished for helping a coworker sue the board." Pieces of this "convincing mosaic" include: the employer telling the investigator to consider termination as the preferred option, the commencement of the investigation despite the state police and state attorney's office clearing the employee of any wrongdoing, and finally, the breadth of the investigation which involved searching the employee's office for documents unrelated to the suit and studying the employee's phone records.

The court found that "this 'extraordinary departure' from board policy could support adverse inferences about the defendants' motives," and remanded the case for trial. The moral of the story for all employers is that designing a workplace investigation to suit the particular situation, taking into account the various potential liabilities, is a critical and complicated process. Even employers equipped to handle investigations internally should consult with counsel about the investigation process before embarking.

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