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CLIENT ALERT: First Circuit Finds No Individual Liability Under Title VII

On February 23, 2009, the United States Court of Appeals, First Circuit, followed the decisions of other circuit courts in finding that Title VII does not provide a cause of action against individual employees. This decision does not change the Massachusetts state anti-discrimination law, which permits individual liability.

In *Fantini v. Salem State College*, 557 F.3d 22 (1st Cir. 2009), Fantini, a terminated female employee, sued Salem State College, alleging that she was subject to sex discrimination and retaliation when she was fired for complaining to her supervisor about problems and errors in the work of a male co-worker. Fantini alleged that the College discriminated against her in violation of Title VII and its state counterpart, Massachusetts General Laws Chapter 151B ("Chapter 151B"). She brought claims against Salem State College, as well as the President of the College and various supervisors and human resources professionals at the College.

The First Circuit agreed with the lower court and affirmed the dismissal of Fantini's Title VII claims against the individual defendants, finding that Title VII does not provide a cause of action against individual defendants.

The First Circuit also found that Fantini's complaints about her male co-worker's behavior were insufficient to support a retaliation claim, under both Title VII and Chapter 151B. The First Circuit concluded that Fantini did not engage in "protected activity" under the law when she complained to her supervisor about her male co-worker's conduct. Fantini's complaints were not based on discriminatory practices against any particular individuals or discriminatory practices by the College.

Notably, however, the First Circuit concluded that Fantini complied with Title VII's administrative "exhaustion" requirement. The District Court had dismissed Fantini's gender discrimination claim on the basis that she had failed to state such a claim in her complaint to the Massachusetts Commission Against Discrimination ("MCAD"), in which Fantini made "one passing mention of gender discrimination in the last paragraph of the five page attachment" to her charge. The First Circuit reversed, finding that Fantini had stated a claim for gender discrimination where she stated that a male co-worker was not disciplined for work problems similar to Fantini's, that she believed she was terminated because of "gender discrimination," and she described an instance where she was treated differently than a male co-worker. The First Circuit remanded her Title VII gender discrimination claim against Salem State College to the District Court for further proceedings.

Following *Fantini*, employee's claims under Title VII are limited to those against the employer, not individual supervisors or other employees. Nonetheless, employers and individuals must be sure to remember that state law may be more favorable to employees and allow suits to proceed against individuals. For instance, as mentioned above, Massachusetts state law, Chapter 151B, permits individuals to be sued for unlawful discrimination. Also, while an employee's run-of-the-mill

complaints to supervisors and employers about other employees will not qualify as “protected activity,” employers will want to proceed cautiously in evaluating those complaints for any basis for finding discriminatory conduct. Finally, when an employer receives a complaint filed with the MCAD or the Equal Employment Opportunity Commission (“EEOC”), the employer will need to review the complaint carefully and ensure that it is prepared to defend against any claim raised within the charge, no matter how “passing” the reference may appear to be.

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