

No Retaliation For Termination Based on Employer's Mistaken Belief of False Report, Says Fourth Cir.

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On June 7, 2017, the Fourth Circuit Court of Appeals held that, so long as an employer honestly believed its employee had made a false report of harassment, its decision to fire that employee cannot constitute unlawful retaliation...even if the employee's report ultimately turned out to be truthful.

In *Patricia Villa v. CavaMezze Grill, LLC, et al.* (No. 15-2543), the plaintiff, Patricia Villa ("Villa"), was a low-level manager at the Cava Mezze Grill in Merrifield, Virginia. In October 2013, one of the employees that Villa supervised, Judy Bonilla ("Bonilla"), told Villa that the company's general manager, Marcelo Butron ("Butron"), had proposed a *quid pro quo* arrangement, offering her a pay raise in exchange for sex. Villa promptly reported the alleged unlawful conduct to the company's Director of Operations, who in turn notified the CEO.

During the subsequent investigation, when Bonilla—the alleged victim of harassment—was specifically asked whether Butron had offered to give her a raise in exchange for sex, Bonilla denied this, and also denied making the statements that Villa had reported. The company also interviewed several other current and former employees whom Villa had identified as possessing knowledge of Butron's actions, all of whom denied knowing anything about any sexual harassment from/by Butron. As a result, the company concluded that Villa had made up the allegations, and decided to fire her for apparently fabricating the report.

After Villa filed a charge of unlawful retaliation with the Virginia Office of Human Rights and the EEOC, she subsequently filed a lawsuit in the Eastern District of Virginia federal court, alleging retaliation in violation of Title VII of the Civil Rights Act ("Title VII").

During the ensuing litigation, Bonilla gave sworn deposition testimony, during which she changed her story; she acknowledged that Villa had, in fact, accurately reported their conversation to the company's Director of Operations, and that Bonilla had lied when she told the company otherwise during its October 2013 investigation. Bonilla also testified that, although Butron had never actually offered to give her a raise in exchange for sex, Villa had no knowledge that Bonilla's allegation had been false.

The company moved for summary judgment, contending that even if it had incorrectly concluded that Villa had fabricated her allegation, its decision to terminate her for apparently making a false report did not constitute Title VII retaliation. The company pointed out that Villa did not (and could not) dispute that its true reason for terminating Villa was a good-faith belief that she had made up her allegations about Butron. The trial court agreed, finding that Villa was not fired for reporting discrimination—which would clearly be illegal—but for making a false report. The fact that Villa was ultimately shown to have been telling the truth (based on what Bonilla had told her) was irrelevant, as was the question of how ineffective the employer's 2013 investigation into her allegations may have been.

Villa appealed the judgment, arguing that because she'd acted in good faith when she made her report, her termination constituted illegal retaliation, regardless of what the company honestly believed based on its own investigation.

Title VII makes it illegal for an employer to retaliate against an employee simply because he or she opposes an unlawful employment practice (commonly known as the "opposition clause"). Such claims require proof that the desire to retaliate was the "but-for cause" of the challenged employment action. Thus, in order to prove that her termination violated Title VII, Villa had to show that the company was motivated by a desire to retaliate against her for engaging in conduct that the opposition clause protected.

In affirming the district court's award of summary judgment in favor of the company, the Fourth Circuit held that "because its investigation led it to conclude in good faith that Villa had simply made up her conversation with Bonilla," the company's reason for terminating Villa was clearly not retaliatory. The appellate court acknowledged that "if Villa was fired for misconduct she did not actually engage in, that is unfortunate, but a good faith factual mistake is not the stuff of which Title VII violations are made." In sum, because the employer truly (if wrongly) believed that Villa was lying, it cannot be held liable for firing her.

It will be interesting to see whether the plaintiff/appellant in this case petitions for writ of certiorari to the U.S. Supreme Court. While the conclusion reached by the district court and the Fourth Circuit may be technically sound, some fear this decision could provide a strong disincentive to the reporting of sexual harassment. Employees who come forward to report harassment by senior company officials are already in a precarious situation; knowing that their report could be labeled false and that they could be fired for filing a false report could further chill reports of illegal conduct.