

## HRAGC LEGAL UPDATE

DECEMBER 19, 2024

### FEDERAL

#### First Circuit Court of Appeals

On December 16 the First Circuit Court of Appeals overturned a District Court's grant of summary judgment to the State of Rhode Island in a disparate treatment discrimination case. The Court clarified that it is generally enough for a plaintiff to defeat a summary judgment motion by showing both a prima facie case of discrimination and sufficient evidence that the employer's stated justification for the adverse employment action is false, and that it is not necessary for the plaintiff to present additional evidence of discrimination. Thus, it was wrong for the District Court to require the plaintiff to show additional evidence.

The plaintiff, a gay woman, was the associate director of the Rhode Island Office of Veterans Affairs. A new director was appointed and he determined plaintiff's job overlapped with his too much and he decided to reorganize the office. This resulted in plaintiff losing her job. In the lead up to the termination, a new organizational chart was produced and the director emailed his plan. He explained he was eliminating the position due to budgetary and efficiency concerns and he did not mention any new positions. But within days of the termination, he announced the creation of a new position for the executive team and he hired a less-qualified heterosexual male for the job. The plaintiff was never informed of the availability of the new position.

The First Circuit found there was evidence of pretext. State officials acknowledged there was no pressing budgetary reasons for eliminating the plaintiff's position. On the efficiency justification, the Court held the two positions were not similar, plaintiff had many independent duties that did not overlap, and after the termination the director reassigned some of her duties to others in the department. The fact that the new position was created just two days after plaintiff's termination and the director assigned some of plaintiff's duties to the new person, was further evidence of pretext. There were many other facts relied on by the Court, including questionable research supporting the reorganization, disputes over who was on the executive team, and what looked like a team of all heterosexual men.

While there was no smoking gun, the Court determined this was a case where the whole was "greater than the sum of the parts."

The case is *Repoli v. State of Rhode Island*

This opinion is a reminder that employers who are reorganizing or considering taking adverse action against an employee, should closely examine in advance whether legitimate evidence establishes a proper justification for the decision, or whether there is any evidence that may show the stated justification is a pretext for discrimination.

## **Third Circuit Court of Appeals**

Also on December 16, the third Circuit Court of Appeals reversed a judgment for an employer in an ADA retaliation claim, finding the plaintiff had proffered sufficient evidence of pretext.

The plaintiff was injured in a car accident and returned to her position with a professional services company requiring accommodations, including reducing her job requirements, working a part-time schedule and taking time off for therapy appointments. Her supervisor expressed frustration with the accommodations. The plaintiff continued working for five years and the accommodations changed during that time.

The supervisor opposed accommodation requests and sent several emails to human resources, including one complaining that it “seems to be a never-ending story” and asking what he can do about this. After being advised there was nothing they could do because the documentation was in order, he wrote that would have a separate conversation with HR. After a request for intermittent leave, the supervisor asked HR for assistance on having a conversation with the employee because the employee was holding back the team from evolving. She asked for guidance from HR on preparing for the future.

Ultimately, ten months after the leave request, the supervisor terminated the employee saying her job was eliminated, but later said it was because the employee was a poor performer and poor collaborator. He explained the different stories by saying he wanted to soften the blow by telling her the termination was not due to her poor performance.

The Third Circuit reversed the judgment saying there was sufficient evidence of pretext. The evidence included reviews praising her performance and saying she was a good collaborator. The Court also found the length of time the employer had provided the accommodations was not enough to support the judgment. Utilizing the same burden-shifting framework as in the *Repoli* case discussed above, the Court found the case should go to trial.

The case is *LaFiandra v. Accenture, LLP*.

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