



“TEMPORAL PROXIMITY” ALONE INSUFFICIENT TO PROVE RETLIATORY DISCHARGE CLAIM

In a recent decision, the Federal Fifth Circuit Court of Appeals affirmatively rejected the notion that temporal proximity standing alone can be sufficient proof of “but for” causation in a Title VII retaliatory discharge claim. In *Strong v. University Health Care System, L.L.C.*, 2007 WL 891148 (5th Cir. (La.)), plaintiff Laurie Strong sued UHS alleging gender discrimination and retaliatory discharge

Strong worked as a nurse coordinator for UHS, a large Louisiana hospital. She complained to one of her supervisors on December 15, 2003 of alleged gender discrimination by a hospital surgeon, based largely on angry comments by the surgeon on three separate occasions that she was “stupid” and “lazy.” Both before and after the date of this complaint, however, numerous complaints had been made about Strong’s behavior in the workplace by patients, co-workers, supervisors, and physicians. Strong was eventually terminated on March 31, 2004 for poor performance, improper work conduct, arguing with superiors, and obstructing various departmental policies. On November 24, 2004, Strong filed her complaint alleging Title VII and Louisiana law violations.

UHS moved for summary judgment on both the gender discrimination and retaliation claims, arguing that the surgeon’s comments to Strong were too insignificant to be actionable as gender discrimination, and that Strong had failed to present legally sufficient evidence that defendant’s reasons for firing her were pretextual. The summary judgment was granted by the trial court. On appeal, Strong challenged only the dismissal of her retaliation claims.

The Court of Appeals noted that since Strong’s retaliation claim was based on a pretext theory, the analysis was governed by the well-known *McDonnell Douglas* test and its burden shifting framework: Strong must first make a *prima facie* showing that her termination was retaliatory; the burden shifts to UHS to state a legitimate, non-discriminatory reason for Strong’s firing; the burden then shifts back to Strong to prove pretext. Strong argued that her burden was merely to show a “causal link” between the alleged retaliation and the adverse employment action, whereas UHS argued that Strong must show she would not have been fired “but for” UHS’s alleged retaliatory purpose. The Court rejected Strong’s

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“causal link” contention, noting that this standard was applicable in the *prima facie* part, but not the pretext part, of the *McDonnell Douglas* test.

The Court noted that based on previous Fifth Circuit cases, that “the proper standard of proof ... [for] a Title VII retaliation claim is that the adverse employment action ... **would not have occurred ‘but for’ [the] protected conduct.**” Strong relied on two pieces of “evidence”: that UHS was more lenient with other employees who acted worse than she did, and there was a close temporal proximity between her complaint against the hospital surgeon and the termination of her employment. The Court rejected the first contention noting the examples cited by strong involved either dissimilar employees or dissimilar conduct. The Court also rejected Strong’s temporal proximity argument (i.e.,

that the three and a half month time span between her complaint and termination showed retaliation). The Court noted that temporal proximity could serve as persuasive evidence to establish a *prima facie* case of retaliation, but stated “we affirmatively reject the notion that temporal proximity standing alone can be sufficient proof of but for causation.” Since UHS stated legitimate reasons for firing Strong, which Strong was unable to refute as pretextual, the dismissal of her retaliation claim was affirmed.



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