

Officials Not Entitled to Qualified Immunity in First Amendment Retaliation Claim

Labor & Employment Law Update

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Recently, the United States Court of Appeals for the Second Circuit ruled that police officials in Madison, Connecticut are not immune from liability for a fired police officer's claim that she was retaliated against for her First Amendment speech. The case of *Ricciuti v. Gyzenis*, No. 12-432 (2nd Cir. August 24, 2016) involves a police officer who shortly after being hired inquired about the poor condition of police vehicles and was told that the department needed funds to cover overtime. On her own initiative, Rebecca Ricciuti prepared a work schedule that would have reduced the amount of overtime and presented it to a supervisor. In response, Ricciuti was told by the supervisor that "scheduling was none of her business" and that he needed the overtime to "pad [his] pension."

Ricciuti later raised her concerns with the Chief of Police, Robert Nolan, who asked her to provide her suggestions. Ricciuti, working with Officer Scott Pardales, prepared a proposal that identified the scheduling problems and contained proposed reforms. The proposal generally addressed scheduling, but did not specifically make reference to the supervisors assigning themselves unnecessary overtime. Separately, however, Ricciuti prepared a second document – an overtime matrix – which directly addressed what Ricciuti deemed questionable overtime practices. In the matrix, Ricciuti characterized the department's overtime practices as "mismanagement." In addition, Ricciuti identified unnecessary overtime costs of approximately \$100,000. Ricciuti claimed that she prepared the matrix on her own after researching publicly available documents. Officer Pardales shared the matrix with an elected official. Meanwhile, Ricciuti shared the matrix with a local critic, who had also been researching the overtime issue.

After negative public reaction to the matrix findings, Chief Nolan had a lieutenant conduct an internal investigation of Ricciuti. Ricciuti was subsequently fired for "insubordination" during the investigation. Ricciuti sued police officials claiming that she was terminated in retaliation for speaking out about the department's overtime practices. Defendants filed a motion for summary judgment arguing that under the Supreme Court's 2006 decision in *Garcetti v. Ceballos*, Ricciuti's speech "was not protected because she had spoken as an employee addressing

private workplace grievances.” In *Garcetti*, the Supreme Court held that speech was not protected if it was made pursuant to the employee’s official job duties. The court denied the motion and concluded that officials were not entitled to qualified immunity because they should have known that they could not fire an employee for speaking out “as a citizen about a matter of public concern.”

On appeal, the Second District agreed with Ricciuti and rejected defendants’ qualified immunity argument noting that a public employee’s speech as a citizen on a matter of public concern has First Amendment protection.

While overtime practices in the Madison Police Department may be an exception to the rule, it is a certainty that employees will periodically voice concerns about management officials’ direction, policies and decisions. Such concerns may or may not be legitimate. The valuable lesson to be learned from *Ricciuti* and *Garcetti* is that public employers have to carefully consider employee speech and avoid a reactionary response to any employee condemnation or criticism of workplace practices and instead focus on whether such speech is the result of the employee’s duties evaluating internal matters or the employee simply voicing concerns as a member of the public.

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