

# Suspicious Timing of Termination Supports Retaliation Claim

## Labor & Employment Law Update

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A recent 7<sup>th</sup> Circuit Court of Appeals decision, *Gracia v. Sigmatron, International, Inc.*, Case No. 15-3311, is a good reminder to employers to be careful in taking adverse action against an employee who recently engaged in statutorily protected activity. In *Gracia*, a longtime employee, who had complained of sexual harassment by her supervisor and filed a charge of sex discrimination with the Equal Employment Opportunity Commission (EEOC), was fired two weeks later for allegedly allowing a subordinate to make a production error on a customer order. The employee sued her former employer for sex discrimination and retaliation. While Gracia was unsuccessful on her sexual harassment claim, a jury found in her favor on the retaliation claim, awarding \$57,000 in compensatory damages and \$250,000 in punitive damages.

Gracia was highly regarded and had received a number of promotions. In her current role as assembly supervisor, she was responsible for production output, quality, and overseeing the work of her team members on the assembly line. Gracia's male supervisor began sending her sexually graphic photographs through the company's email system. Gracia did not complain because of her supervisor's position and his friendship with the company's president. The supervisor then began writing Gracia up for attendance issues, even though Gracia had not been previously written up for similar problems in the past and, in fact, had been told her attendance was "excellent." Gracia alleged the supervisor began calling her at home and asking her out. She declined and was suspended a few days later for attendance problems.

Gracia then complained to HR about her supervisor. HR informed the company's president, who ultimately told Gracia and her supervisor to 'shake hands' and get along. Gracia, unhappy with the company's response, filed a charge with the EEOC. Two weeks later, she was fired after one of her subordinates made a mistake, even though others made similar mistakes and were not terminated. Perhaps of significance to the jury on the punitive damages award was evidence that the company never admonished the supervisor for sending the graphic photographs but rather simply told him to stop using the company's email for non-business reasons. The company also refused to admit the photographs violated the company's sexual harassment policy.

On the retaliation claim, the 7<sup>th</sup> Circuit reiterated the general rule that timing alone is rarely enough to support a retaliation claim; however, if there is other circumstantial evidence, it may raise an inference of retaliatory motive. Here, the suspicious timing of Gracia's termination, coupled with evidence that others had not been terminated for similar mistakes, supported the retaliation claim.

Employers are reminded that before you take action against an employee who has recently engaged in protected activity (i.e., complained of discrimination, filed a charge), make sure you have, or would have, taken the same action against other employees for doing the same thing. Consult with experienced legal counsel before taking adverse action against a 'protected' employee.

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