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“Sex-Plus” Discrimination Equals Possible Liability

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The Sixth Circuit recently addressed whether a **“sex-plus”** claim of **discrimination** can be made under **Title VII of the 1964 Civil Rights Act**. “Sex plus” refers to policies or practices by which an employer classifies employees on the basis of sex plus another characteristic, such as race or age. The case,***Shazor v. Prof’l Transit Mgmt., Ltd****.,* 2014 BL 42520, 6th Cir., No. 13-3253, 2/19/14, reinforces the concept that employers must consider employees’ protected traits as an “intersectional” whole, rather than separate, individual aspects.

The plaintiff, Marilyn Shazor, is an African American woman assigned by her employer, **Professional Transit Management** (PTM), to serve as the CEO of a regional transit authority (SORTA). After assuming the role, senior management officials began to question Shazor’s allegiance to PTM – rumors spread that she might be trying to get directly hired by SORTA. Two PTM officials (Setzor and Scott) exchanged emails wherein they referred to Shazor as a “prima donna” and “one helluva bitch,” as well as disloyal and disrespectful.

Setzer was Shazor’s direct supervisor until August 2009, when he was replaced by Tom Hock. In 2010, Shazor was fired by Hock for allegedly dishonest statements she had made to the SORTA board. PTM replaced Shazor with a Latina woman. Shazor then filed suit asserting race and gender discrimination. The District Court granted PTM summary judgment. On appeal, the Sixth Circuit reversed the lower court’s ruling.

The Sixth Circuit found that Shazor had established a prima facie case of discrimination necessary to survive summary judgment because she had shown that she was replaced by someone outside of her statutorily protected class with respect to her race discrimination claim. Although her replacement was of the same sex, Shazor’s sex bias claim “cannot be untangled from her claim of race discrimination.”

According to the Court, the protected classifications of race and sex “do not exist in isolation.” Rather, “African American women are subjected to unique stereotypes that neither African American men nor white women must endure. And Title VII does not permit plaintiffs to fall between two stools when their claim rests on multiple protected grounds.”

There is more to learn from this case – check back on Wednesday for a continued discussion of its implications.

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