

Huang v. Continental Casualty Co. and "On-Call" Duty - Recent Developments in the Courts

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The Seventh Circuit recently held on-call duty is a legitimate work expectation even though an employer fails to include it in the job description. *Huang v. Continental Cas. Co.*, 754 F.3d 447 (7th Cir. 2014). In *Huang v. Continental Casualty Company*, an Asian-American plaintiff asserted race, national origin, and retaliation claims under Title VII and Section 1981 against his employer when he was fired after refusing to work on-call duty during the weekend. The trial court granted summary judgment to the employer.

On appeal, the employer asserted that plaintiff failed to meet work expectations by refusing on-call weekend duty while plaintiff argued his job description failed to list on-call weekend duty as a requirement. The Seventh Circuit agreed with the employer and found that its failure to memorialize the requirement in the job description did not invalidate it as a legitimate work expectation.

Going further, the Seventh Circuit rejected plaintiff's contention that he met work expectations because he offered a suitable alternative to the on-call weekend duty requirement. For example, he offered to work in the office on Sundays but refused to carry a pager on Saturday and Sunday.

Providing leverage for employers who require employees to work undesirable shifts, the court stated, "although a longing to spend more time with family is understandable, it does not undermine the legitimacy of a work schedule that cuts into family time." *Huang*, 754 F.3d at 451. The court also found plaintiff failed to identify similarly situated non-Asian or non-Chinese employees who were treated more favorably than plaintiff. Under *Huang*, an employer is entitled to decide whether an employee is meeting its legitimate work expectations and will not be found liable for terminating an employee who refuses to do so.

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