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Baez v. Anne Fontaine USA: Rumor and Drama at Retailer Creates Jury Question

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Employment, Labor, Workforce Management

In January, a New York federal district court denied a retailer's bid to dismiss a former regional manager's lawsuit alleging that workplace rumors spread by three female co-workers that she showed her breasts to the company's CEO by wearing a revealing blouse without a bra and that her subsequent termination shortly after she complained about the gossip constituted hostile work environment sex discrimination and retaliatory discharge. ***Baez v. Anne Fontaine USA, Inc.***, No. 14-cv-56621 (KBF), 2017 U.S. LEXIS 1630 (S.D.N.Y. Jan . 5, 2017).

Background

Baez, who normally dressed without a bra, was employed as the East Coast Regional Manager for Anne Fontaine USA, Inc. ("AFUSA"), a clothing retailer that operates 25 stores nationwide.

In September 2013, AFUSA began looking for candidates to replace Baez because of alleged unsatisfactory job performance. On September 27, 2013, AFUSA extended an offer for Baez's position to a candidate who declined the job.

In late December 2013, Baez heard that two female managers who reported to Baez and the company's retail operations manager (also female) were spreading a rumor that Baez had worn a revealing blouse and no bra at a meeting with the CEO, thereby showing him her breasts. On December 27, 2013 Baez reported the rumor to the company's Controller who, after conferring with the retail operations manager, advised Baez not to write-up one the managers because Baez had already given her a verbal warning and not to terminate the other manager because she was a top performer.

On the 27th, Baez also sent an email to the CEO complaining that one of the managers was telling her team that Baez would soon be terminated. Baez did not, however, mention the rumor about her revealing blouse.

On January 14, 2014 the Controller responded in writing to Baez's complaint about the rumor advising her "[R]garding the content of the rumor/gossip, you either need to be strong and say 'so be it, I make my own fashion and life choices…' Or, if the content bothers you, you need to adjust what you are doing to prevent such rumors/gossip, but you can't prevent people from having their

opinions." The Controller reiterated that she did not recommend escalating the matter to a written warning.

On January 30, 2014, however, at the direction of the CEO the Controller and Baez met with one of the managers to issue her a written warning. Baez disagreed with the wording of the warning and the manager refused to sign it.

In the meanwhile on January 6, 2014 a week after Baez's emailed complaints, AFUSA went back to the candidate who had turned them down in September and arranged for her to meet with the CEO. On January 27, 2014 AFUSA offered and the candidate accepted the position of "North America Director," to start on February 10, 2014.

Thereafter, on February 7, 2014, the CEO and the Controller terminated Baez's employment. In the termination meeting, which Baez unilaterally taped, the CEO gave Baez three reasons for her discharge: (1) unsatisfactory management of an employee at one of the stores under her supervision; (2) problems associated with the opening of a store; and (3) that she was connected with "too much drama." Baez sued AFUSA, the CEO and the Controller alleging violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), the New York State Human Rights Law ("NYSHRL") and New York City Human Rights Law ("NYCHRL").

The Court Rulings

The district court found that Baez's complaint about the gossip regarding her going bra-less and allegedly showing her breasts to the CEO constituted protected conduct and a "very weak claim of discrimination." The court noted that "if comments on bra-less attendance at a meeting were made by a man, plaintiff's case would be much stronger[,]" but found "no legal reason why the gender" alters the analysis. The court opined that "even 'a single comment that objectifies women . . . made in circumstances where that comment would, for example, signal views about the role of women in the workplace [may] be actionable."

The district court also held that the short time frame between Baez's December 27, 2013 Complaint and her February 7, 2014 discharge, in part, for being associated with "too much drama" created a sufficient factual dispute to preclude summary judgment on the retaliation claim. The district court acknowledged that AFUSA had articulated two legitimate business reasons for Baez's discharge, i.e., alleged poor management of an employee and alleged problems with a store opening. Citing Second Circuit precedent, however, the court stated that retaliation need not be the only reason for the adverse job action, but "only that the adverse action would not have occurred in the absence of the retaliatory motive."

The district court also concluded that there was an issue of material fact over whether the controller adequately investigated the rumor and whether AFUSA responded with the appropriate discipline. The court granted summary judgement as to the CEO finding no evidence that he directly participated in or abetted any violation of law.

In sum, the content of the gossip, which concerned Baez's sex; the remedial nature of discrimination statutes and in particular the expansive nature of the NYCHRL; and the use of the word "drama"- a term more likely to be applied to a woman's behavior – as a reason for Baez's discharge following her complaints, combined to create enough of a factual dispute to preclude summary judgment.

Lessons For Employers

Retail employers, especially those operating in New York City, should ensure that employees are counseled about the employer's anti-discrimination and anti-harassment policies, fully investigate all complaints that potentially implicate anti-discrimination laws, and, when appropriate, discipline offending employees.

Retail employers should also ensure that adverse employment actions are based solely upon legitimate non-discriminatory factors which, preferably, are documented. Employers should be careful to avoid ambiguous or potentially charged language, which might undermine the employer's legitimate reasons for discharge or discipline, when speaking with the employee.

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