

The Rumor Mill Is Now Your Problem? Yes, According to the Fourth Circuit

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In a decision that could have wide-ranging implications for all employers, the Fourth Circuit recently held that an employer's failure to stop a false rumor that a female employee slept with her male boss to obtain a promotion, could give rise to employer liability under Title VII for gender discrimination. *Parker v. Reema Consulting Services Inc.*, No. 18-1206 (4th Cir. Feb. 8, 2019).

So now employers must police the rumor mill? This decision is confusing to say the least, as employers now have dueling obligations—to quash rumors while not infringing upon an employee's Section 7 rights to discuss the terms and conditions of employment.

ALLEGED FACTS

According to the Complaint and reported decision¹, plaintiff Evangeline Parker worked for Reema Consulting Services, Inc. ("RCSI") at its warehouse facility in Sterling, Virginia. Parker began as a low-level clerk and was promoted six times in approximately two years, ultimately holding the position of Assistant Operations Manager. Two weeks after her latest promotion, a male employee started a rumor that Parker received the promotion because she was having a sexual relationship with her boss. The male 'rumor monger' had started at RCSI at the same time as Parker, but had not been promoted and was now reporting to Parker.

Subsequently, a warehouse manager (male) began to spread the rumor and Parker's direct reports and coworkers started treating her with hostility. After six weeks, the warehouse manager held a mandatory all-staff meeting, allegedly to discuss the rumor. Parker and her boss were late to the meeting, however, her boss was allowed into the meeting while the warehouse manager was claimed to have "slammed the door in Parker's face."

Parker scheduled a meeting with the warehouse manager to discuss the rumor where he blamed her for "bringing the situation in the workplace" and told her that she could no longer advance in the company because she complained about the rumor.

Parker filed a formal hostile work environment complaint with HR. She claimed that HR instructed her to avoid her boss, but placed no restrictions on him. Later that month, Parker was called to a meeting with HR and the warehouse manager; she was issued two written warnings (one for complaining about the harassment) and was terminated.

PARKER'S CLAIMS AND THE DISTRICT COURT DECISION

Parker filed suit alleging claims under Title VII, including: (1) hostile work environment on the basis of sex; (2) retaliatory termination; and (3) discriminatory termination on the basis that RCSI

terminated her employment contrary to its three warnings rule.

RCSI filed a motion to dismiss and the district court granted the motion, explaining that the rumor was not based upon Parker's gender but instead her conduct. The district court further held that the alleged harassment was not severe and pervasive because the rumor lasted only a few weeks and involved only a "few slights." As such, the court also dismissed Parker's retaliatory termination claim because her belief that she was subjected to gender discrimination was not objectively reasonable since the rumors were not based upon her gender.

FOURTH CIRCUIT REVERSES DECISION

Surprisingly, the Fourth Circuit reversed the district court decision and held that RCSI may be liable for failing to quash this rumor on the theory that it perpetuated a 'deeply rooted perception' that women (not men) use sex to achieve success. The Court relied upon gender stereotyping cases, including the seminal Supreme Court case *Price Waterhouse v. Hopkins*, 490 U.S. 228, 250-51, 258, 272-73 (1989). The Fourth Circuit emphasized that assuming all of Parker's allegations to be true, the rumor clearly resulted in Parker being treated differently from male employees (i.e., male employees started the rumors, Parker was excluded from an all-staff meeting regarding the rumor while her male supervisor was not, and only Parker was sanctioned for complaining about the alleged harassment while her male supervisor was not).

The Fourth Circuit also rejected the district court's conclusion that Parker failed to allege that the harassment was severe and pervasive. It reasoned that the alleged harassment did not last a mere two weeks, but rather, two months and found it to be more than a few "slights." The Court found that the alleged harassment was continuous, consumed management and employees and was at times physically threatening (the warehouse manager slamming the door in Parker's face). Thus, the Fourth Circuit concluded that Parker sufficiently alleged that the harassment was severe and pervasive and interfered with her work.

GUIDANCE FOR EMPLOYERS

At first blush, it seems outrageous that an employer could be liable for failing to control rumors in the workplace. In fact, how would an employer even do that? Even if an employer could, would an employer be infringing upon employees' Section 7 rights by instructing employees not to speak about a workplace romance?

The answer: it depends on the rumor and how management reacts to the rumor. In that regard, this case may be a demonstration of the adage that – bad facts make bad law.

There were a number of bad facts here which led to this result, most notably the fact that the warehouse manager was alleged to have spread the rumor and then called a meeting to discuss the rumor with staff. Assuming that were true – and we know there may be two sides to the story – that puts management right in the thick of the rumor spreading.

So, the lesson to be learned here includes:

- A false rumor grounded in a harmful gender-based stereotype may result in employer liability for unlawful gender discrimination if management takes part in spreading it.
- Managers that are aware of malicious rumors may need to take steps to quiet them and certainly should not spread them.

- Managers should also know that if they are found to be spreading malicious gossip or rumors, they may be subject to discipline.
- Finally, once the employee has made a complaint, it goes without saying that the company should not retaliate against the employee.

To further complicate matters, employers should remember that the [NLRB has held that broad “no gossip” policies violate the National Labor Relations Act](#) because they discourage employees from speaking to coworkers about the terms and conditions of employment.

The takeaway? Employers must pay attention to the content of the rumor and act accordingly.

¹ For purposes of summary judgment, allegations in a complaint must be assumed to be true. We take no position on whether the allegations were in fact accurate.