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## Labor, Employment & Benefits e-News

AUGUST 21, 2006

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### Court Upholds Verdict Awarding No Damages for Harassment under Title VII

Abdul Azimi, a Muslim immigrant from Afghanistan, worked at the Jordan's Meats plant. Azimi claimed he was called names, was physically abused, was left threatening notes, had his protective equipment smashed, and was denied access to certain safety protocols. In addition, coworkers put pieces of pork in his pockets and tried to shove pork into his mouth. Azimi complained to his supervisors and the company's Human Resources Department. Jordan's Meats concluded its investigation, finding that Azimi instigated or participated in some of the ugly exchanges with his coworkers and that he engaged in off-color joking and teasing with at least some of his harassers. Azimi eventually was terminated for five related acts of misconduct, including threatening a female employee in a parking lot, making a false allegation, and threatening another coworker. Azimi's termination occurred approximately nine months after he filed his complaints of harassment and two months after the 9/11 attack on the World Trade Center.

Azimi sued Jordan's Meats for racial, religious and ethnic harassment and for retaliation for filing complaints in violation of Title VII. The trial court granted summary judgment to Jordan's Meats on the discrimination and retaliation claim, but Azimi's harassment claims went to a jury, which found discrimination but declined to award damages. Azimi appealed.

In [Azimi v. Jordan's Meats, Inc.](#) (8/3/06), the U.S. Court of Appeals for the First Circuit

upheld the jury award, ruling that Azimi failed to present sufficient evidence that he was injured by the harassment and that he waived any claim to damages by seeking them too late in the litigation. The appeals court concluded that Azimi had not demonstrated that he suffered psychological or other damages sufficient to compel an award of compensatory damages. The court also ruled that, based on the evidence presented, the trial court properly determined that Jordan's Meats reasonably concluded that Azimi had engaged in the misconduct and, thus, his termination was not pretextual. The appeals court also ruled that Azimi's claim that he was retaliated against for filing complaints was too remote in time, and dismissed the attack on the World Trade Center as insufficient evidence of unlawful discharge. [\[back\]](#)

## **Knowledge of Complaints Not Sufficient to Prove Retaliation**

Sharon Cox worked as an auditor for the U.S. Department of Defense. Almost immediately after her hire, Cox began to complain of harassment by her supervisor, Neal Gause, whom she alleged subjected her to a hostile work environment, sexual harassment, repeated threats, intimidation, unfair treatment because of her gender, and one instance of unwanted physical conduct. Cox also had performance problems, including difficulty submitting required reports in a timely manner and in the proper format. After noticing her performance problems, Gause and his supervisor, John Snider, met with Cox to discuss their concerns. At her request, Cox was transferred away from Gause and was placed under Snider's direct supervision. Cox filed an internal EEO complaint alleging gender discrimination, a hostile work environment, and sexual harassment. Once Cox was under Snider's supervision, he began to closely monitor her progress and ability to meet deadlines and noted in her mid-year review that she needed improvement in every area of auditing necessary to perform her job. However, because she had not received the necessary training, the review provided a three month period for reevaluation. Cox completed the training, but returned to the office for only one day. Cox then filed a second EEO complaint, alleging that her poor review was retaliation for her initial complaint. Thereafter, she took leave until she was terminated, approximately four months later.

In Cox v. Rumsfeld (7/20/06), the U.S. Court of Appeals for the Fourth Circuit determined that Cox's evidence proved only that the DoD was aware that Cox had filed complaints when they terminated her, but established no nexus between the events. The court noted that mere knowledge on the part of an employer that an employee it is about to discharge has filed a charge is not sufficient evidence to prove retaliation. The court noted that Cox's own evidence indicated that the DoD had voiced concerns about her performance well before she filed her first EEO complaint. [\[back\]](#)

## **Court Finds Transfer Not Adverse Job Action under Title VII**

Bethany Reynolds worked as a manager for Ethicon Endo-Surgery selling medical equipment. Her sales territory was the Dakotas, Minnesota, and parts of Wisconsin. Ethicon reorganized the sales territory and discussed eliminating Reynolds' territory, with the understanding that Reynolds would be offered a comparable territory in Kentucky. Shortly after that conversation, Reynolds learned that she was pregnant and informed her immediate supervisor. Her supervisor congratulated her, but said to keep that information to themselves. Her supervisor later informed Reynolds about the elimination of her territory and gave her a letter detailing a relocation package and transfer to Louisville or St. Louis, or alternatively, a severance package. Under the terms of the relocation package, Reynolds would maintain the same title, pay, and advancement prospects

as she had in her current territory. Reynolds was given two days to decide and, if she chose the severance, her last day of work would be approximately one month later. Reynolds told Ethicon she would not make a decision until after her baby was born; however, shortly thereafter, she suffered a miscarriage. Reynolds sued, claiming the elimination of her position and the manner of notification caused the miscarriage and a subsequent diagnosis of depression, in violation of Title VII, and constituted intentional and negligent infliction of emotional distress. The trial court ruled in favor of Ethicon prior to trial. Reynolds appealed.

In [Reynolds v. Ethicon Endo-Surgery Inc.](#) (7/21/06), the U.S. Court of Appeals for the Eighth Circuit agreed with the trial court, ruling that her transfer did not constitute an adverse employment action because it did not result in a loss of pay, benefit or prestige. The appeals court determined that, although Reynolds may have preferred to remain in her current territory, the new position was not sufficiently inferior to constitute an adverse action. The court also rejected Reynolds' assertion that a transfer to Louisville would be a sufficiently inferior position because her pay, in part, was based on commissions and she was not as familiar with the Louisville market. Additionally, Reynolds' intentional and negligent infliction of emotional distress claims failed because Ethicon's conduct was not sufficiently outrageous or extreme to be intentional, and Ethicon had no legal duty toward Reynolds, as required for a negligence claim under South Dakota state law. [\[back\]](#)

## **White Male Allegedly Fired for Hiring Minorities May Pursue Claims under Title VII**

Brian Kauffman, a white male, worked as an account manager for Maxim Healthcare Services, which provides nurses and other employees to hospitals, nursing homes, and other healthcare facilities. After Kauffman hired a female recruiter, he alleged that he was chastised by two managers and reminded not to forget that Maxim was a "white male driven company." He also alleged that a third manager encouraged him to terminate the female recruiter, which he did not do. Later, he was inexplicably transferred to another city, where he hired another female. He alleged that he again was chastised by a manager for his hiring decision. He later hired a black male and said he was told by management that the new employee was "too ghetto." At the regional manager's direction, he later terminated the black male based on unsubstantiated reports that the employee was seeking another job. Despite evidence that he was performing well, Kauffman was terminated shortly thereafter. Kauffman alleges that his regional manager told him that his "hiring practices don't fit with the company's culture." Kauffman filed a retaliation claim with EEOC and, later, sued for discrimination and retaliation. Maxim sought judgment in its favor prior to trial on the basis that Kauffman is a white male, who was not alleging discrimination against him based on his status, and that Title VII did not include claims of "association discrimination."

In [Kauffman v. Maxim Healthcare Services, Inc.](#) (7/13/06), the U.S. District Court for New York rejected Maxim's argument and recognized the right of Kauffman to assert claims of retaliation and discrimination on account of his claimed opposition to Maxim's alleged policy against hiring of non-whites and women. The court also rejected Maxim's argument that Kauffman failed to report his complaints to upper management, explaining that there is no such requirement under the law. The court concluded that Kauffman's alleged verbal complaints about discriminatory practices and his hiring of minorities in contravention of Maxim's alleged unlawful hiring practices constituted activity entitling him to protection from retaliatory discharge. [\[back\]](#)

## Severance Offer Requiring Dismissal of EEOC Charge Is Retaliation under Title VII and ADEA

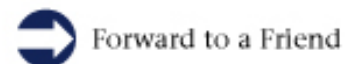
Lockheed Martin informed Denise Isaac that, after more than 20 years, her position would be eliminated and that she would be provided with a severance package in exchange for signing a release of claims. Isaac did not sign the release and instead filed a charge with the Equal Employment Opportunity Commission, alleging race and sex discrimination in violation of Title VII and age discrimination in violation of the Age Discrimination Employment Act. Notwithstanding the EEOC charge, Isaac sought to receive the offered severance benefits. However, Lockheed refused to modify its release language and wrote in response that "if Ms. Isaac decides to sign the release as-is and receives severance benefits, she will have to dismiss her EEOC charge against the company." Isaac did not sign the release and did not receive any severance benefits. The EEOC filed a lawsuit against Lockheed alleging that it retaliated against Isaac by illegally conditioning receipt of the severance benefits on the withdrawal of her EEOC charge and that the release was retaliatory on its face because it conditioned severance payments on an employee agreeing not to file a charge with the EEOC.

In [EEOC v. Lockheed Martin Corporation](#) (8/9/06), the U.S. District Court for Maryland agreed and entered judgment in favor of the EEOC. First, the court found that Lockheed retaliated against Isaac based on her protected activity of filing a charge with the EEOC. The court rejected Lockheed's argument that it could not have retaliated against Isaac because Isaac filed her EEOC charge after she had been presented with the release. The court concluded that the retaliatory act was not presenting Isaac with the release but rather with denying her severance benefits based on her failure to agree to withdraw her EEOC charge. The court relied in part on the letter in which Lockheed stated explicitly that, if Isaac decided to sign the release and receive severance benefits, she would have to dismiss her EEOC charge against the company. The court also rejected Lockheed's argument that Isaac had no entitlement to severance benefits in the first place, and thus, the severance benefits were additional compensation that Lockheed offered in exchange for giving up a right. The court found that, while Lockheed might have been free to offer severance benefits to no one, it could not provide them only to employees who refrained from participating in protected activity. Finally, the court rejected Lockheed's argument that there is a distinction between a waiver of a right to file an EEOC charge and a waiver of right to collect damages. The court ruled that the release was facially retaliatory because Lockheed's release broadly defined "claims" to encompass EEOC charges, which interferes with the public interest in EEOC enforcement of the antidiscrimination laws. [\[back\]](#)

## EEOC Proposes Revisions to Age Discrimination Regulations

The U.S. Equal Employment Opportunity Commission has proposed [revised regulations](#) to the Age Discrimination and Employment Act, in response to a 2004 U.S. Supreme Court decision that struck down one of the agency's interpretations of the ADEA. The EEOC's proposed revisions clarify that the ADEA permits employers to make age-based employment decisions that favor relatively older employees. The 2004 Supreme Court decision found that the EEOC incorrectly concluded that the ADEA protected a group of workers in their 40s who would not be receiving the same retiree health benefits as their older colleagues. The high court ruled that, although the ADEA protects employees who are age 40 or over, the ADEA's text, purpose, history, and

interaction with other statutes demonstrated that Congress intended to protect relatively older workers from discrimination. [\[back\]](#)



For more information, please contact [Stephen Aronson](#) or [Alice DeTora](#) or phone either of them at 800-826-3579. Visit our Labor, Employment and Benefits website at [www.rc.com](http://www.rc.com). To view back issues, visit our [searchable archives](#). If you would like certain information covered in future communications, let us know. We welcome your feedback.

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