

Employer Can Be Liable for Negligently Terminating an Employee Based on Co-Worker's Discriminatory Conduct

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On May 23, 2013, the U.S. Court of Appeals for the First Circuit held in *Velazquez-Perez v. Developers Diversified Realty Corp.* that an employer may be liable under Title VII for negligently terminating an employee. Although the employer did not act out of a discriminatory motive, the Court held that it nonetheless could be liable where a co-worker engaged in discriminatory efforts to cause the plaintiff's termination.

In that case, plaintiff Antonio Velazquez, an operations manager for defendant DDR, often worked with Rosa Martinez, a human resources representative. When he rejected her attempts to initiate a romantic relationship, Martinez began discussing Velazquez's job performance issues with two of his supervisors and recommended that he be terminated. Velazquez's supervisors determined that a formal warning was justified but that he should not be terminated. After Velazquez again rejected her advances, Martinez wrote a long email to company executives recommending that Velazquez be terminated immediately for deficiencies in his performance. Four days later, Velazquez was fired.

Velazquez filed suit in the District of Puerto Rico, alleging, among other things, that DDR discriminated against him on the basis of sex in violation of Title VII, both by terminating him and by subjecting him to a hostile work environment. The district court granted summary judgment against Velazquez, and he appealed. The First Circuit found DDR could be liable for negligently allowing Martinez's discriminatory acts to cause Velazquez's firing, even though Martinez was not Velazquez's supervisor. It explained that an employer faces liability if "the co-worker acted, for discriminatory reasons, with the intent to cause the plaintiff's firing; the co-worker's actions were in fact that proximate cause of the termination; and the employer allows the co-worker's acts to achieve their desired effect though it knew (or reasonable should have known) of the discriminatory motivation." Because a reasonable jury could find that Martinez's conduct satisfied these requirements, the Court found that summary judgment for the employer was inappropriate.

Although *Velazquez* arises out of Puerto Rico, the decision is applicable to employers in Massachusetts, since the First Circuit's jurisdiction includes the Massachusetts federal court. Employers often receive complaints from employees about their fellow co-workers, and the decision is a reminder that employers must consider the motives of the employees making the complaints, not just the substance of the complaints, before taking an adverse action. Even if a complaint is valid, *Velazquez* demonstrates that an employer can nonetheless violate Title VII if the complaint is tainted by an unlawful motive.

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