

Rescinding Termination May Not Defeat Retaliation Claim

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Proving that non-economic damages and perhaps attorney's fees are driving forces in litigation, constructive discharge claims were asserted and survived summary judgment in a federal district court action in Oregon. The Court's ruling permitted a plaintiff's retaliation claim to survive summary judgment even though the employer rescinded the termination and rehired plaintiff within 24 hours after termination. (*Aichele v. Blue Elephant Holdings, LLC dba Human Collective II*, November 13, 2017). Denying the dismissal motion, the Court ruled that even though the employee's discharge was rescinded within 24 hours after it was implemented, and even though Plaintiff suffered no economic loss, she was deemed to have been subject to an actionable adverse employment action under Title VII. In effect, the timing of the discharge soon after certain complaints was sufficient to permit a jury to determine if the company was liable. Reinstatement within 24 hours may have a favorable impact on damages, but not on liability.

In this case, Plaintiff had a documented history of lodging complaints about working conditions. While the employer considered its options and consulted with counsel, the employee lodged a sexual harassment complaint after a video was played in the workplace that contained sexually graphic content. After viewing the video, the employee shouted at her manager and refused to leave the premises when instructed to do so. Several days thereafter, she emailed a formal sexual harassment complaint. Soon thereafter she was discharged. On the day following termination, the owner rescinded the termination decision and placed Plaintiff on paid administrative leave. Although she was placed back on the schedule soon thereafter, she refused to return to work. In sum, she suffered no loss of wages

because the discharge was rescinded, but she resigned (claiming to have been constructively discharged).

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