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Fatal Attraction in the Workplace Proves Basis for Employer Liability

On May 23, 2014, the United States Court of Appeals for the First Circuit held that an employer can be liable for sex discrimination under Title VII of the Civil Rights Act of 1964 “when it terminates a worker whose job performance has been maligned by a jilted co-worker intent on revenge.” The case of *Velazquez-Perez v. Developers Diversified Realty Corp.*, involved a female Human Resource manager who had a romantic interest in a male manager. The HR manager, who was not in the male manager’s supervisory chain, aggressively pursued her romantic interest in him.

Antonio Velazquez-Perez (“Velazquez”) said that his working relationship with the HR manager was generally good for the first ten months, although there were occasional flirtations. In April of 2008, that status changed. The two were both staying at the same hotel during a business trip when the HR manager observed him entering the building with two female coworkers. She followed him to his hotel room and tried to force her way in. Rebuffed, she returned to her room and sent multiple emails to Velazquez and one of the women, suggesting that Velazquez was going to have sex with this other woman. In the days that followed, Velazquez asked the HR manager to respect that he had no romantic interest in her. The situation turned even uglier, with the HR manager writing to Velazquez that “you are nothing without me” and suggesting that she could negatively impact his employment.

Exasperated by the situation, Velazquez complained to his manager about the HR manager. Apparently, not understanding his obligation to address the situation, Velazquez’s supervisor suggested he send the HR manager a conciliatory e-mail or she might have him fired. The supervisor also jokingly suggested that Velazquez have sex with the HR manager.

The HR manager kept her word and initiated an effort to get Velazquez’s bosses to terminate his employment. At the same time, in a disturbing Fatal Attraction sort of way, the HR manager continued to pursue her romantic interest in Velazquez. As part of this disturbing pursuit, she cornered him in the elevator of another hotel, telling him that she did not love her husband and that she remained interested in a romantic relationship with him. The HR manager became even angrier when Velazquez continued to reject her advances. Ultimately, she allegedly

prevailed upon senior management and convinced them to terminate Velazquez.

The First Circuit examined whether an employer can be liable for a co-worker's discriminatory intent even if the co-worker did not have any supervisory authority over the terminated employee, and even though the decision makers did not have any discriminatory intent. The First Circuit held that an employer can be held liable in such a situation if:

1. the co-worker acted, for discriminatory reasons, with the intent to cause the plaintiff's firing;
2. the co-worker's actions were in fact the proximate cause of the termination; and
3. the employer allowed the co-worker's acts to achieve the desired effect though it knew (or reasonably should have known) of the discriminatory motivation.

This decision highlights how important it is for employers to fully investigate termination (or other disciplinary) decisions, especially if the termination is based on the recommendation of others. Even if the decision makers have no discriminatory intent, the employer can still be held liable for discrimination if the decision is based on the recommendation of other employees who have discriminatory intent. A jilted co-worker can find creative ways to take revenge in the workplace, and employers must take the appropriate steps to avoid being duped into terminating an employee for an illegal reason. Supervisors should be reminded to report, document, and investigate all employee complaints, even if they seem trivial.

To avoid liability because of Fatal Attraction or other discriminatory issues in the workplace, we recommend to our clients that managers receive advanced training on issues of harassment in the workplace. We are proud of our track record in protecting you from these types of claims and want to keep it that way. For more information on what we can do to help, please contact Peter Bennett (pbennett@thebennettlawfirm.com) or Rick Finberg (rfinberg@thebennettlawfirm.com).