Seventh Circuit Reiterates Who is "Similarly Situated" for Purposes of Title VII Claims

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Practice Areas

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In a recent opinion, the U.S. Court of Appeals for the Seventh Circuit reiterated the requirements that must be met for an employee to identify a similarly situated comparator for purposes of a Title VII claim. *Gamble v. FCA US LLC*, No. 20-2254, 2021 U.S. App. LEXIS 10148 (April 8, 2021).

Wesley Gamble (Gamble) began working at an assembly plant for Fiat Chrysler Automobiles (FCA) in July 2015. During his onboarding and again later in his employment, Gamble received a copy of FCA's anti-harassment policy. The policy stated that, in the event of allegations of sexual harassment, FCA would conduct an investigation and take appropriate corrective action, up to and including termination of employment.

In October 2015, two female employees complained that Gamble had made inappropriate and sexually harassing comments towards them. FCA's human resources department investigated, issued Gamble a written warning, and required him to attend remedial training. In August 2017, FCA received another report of Gamble acting inappropriately toward a female employee who reported to him. After the investigation corroborated the report, FCA terminated Gamble's employment.

In response, Gamble filed a lawsuit against FCA alleging, among other things, that he was treated unfairly during FCA's investigation and ultimately fired due to his race (African American) in violation of Title VII of the Civil Rights Act of 1964, as amended. After FCA moved for summary judgment on Gamble's race discrimination claim, the district court dismissed the claim

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because Gamble "lacked any evidence that FCA treated similarly situated, non-African American employees more favorably" than Gamble.

On appeal, Gamble argued that he was treated differently from a white employee who had violated the same policy as Gamble but who was not discharged. The Seventh Circuit determined that the white employee Gamble referenced was not "similarly situated" to Gamble because Gamble "failed to identify someone who was subject to the same performance standards and engaged in misconduct of comparable seriousness." Specifically, there was no evidence that the white employee Gamble used as a comparator had violated FCA's anti-harassment policy twice, as Gamble had. Gamble, like his alleged white comparator, "was not discharged after his first violation, so the distinction mattered."

Thus, for purposes of Title VII, an employee outside of the complaining employee's protected class is not a "similarly situated comparator" simply because the alleged comparator also engaged in misconduct where such misconduct is not of "comparable seriousness." In sum, the court's opinion underscores a simple but valuable lesson for employers: like misconduct must be met with like discipline.