5th Circuit: No Evidence of Racial Bias in Terminating Hospital Employee

6/17/2011 By Colin Durham

A hospital employee failed to provide sufficient evidence that her termination was based on a widespread or persistent practice of racial animus, according to the 5th U.S. Circuit Court of Appeals.

Veronica Okon, who is black, worked as a pharmacist for the Harris County Hospital District for eight years before she was terminated on Aug. 19, 2005, pursuant to a reduction-in-force (RIF) policy directed by the district's board of managers. The policy supplied a five-tier race-neutral hierarchy for the reduction of employees and required each department to submit a reduction plan, including an assessment of how each individual was identified for termination.

In 2009, Okon filed suit alleging that the district deviated from the RIF policy and terminated her because of her race. Because Okon waited almost four years to file suit, she could not assert a claim under Title VII of the 1964 Civil Rights Act, which has a two-year statute of limitations. Rather, Okon sued under the Civil Rights Act of 1866 (42 U.S.C. §1981), which has a four-year statute of limitations. Okon amended her complaint to add a claim under the Civil Rights Act of 1877 (42 U.S.C. §1983) because a local government cannot be held liable for employment decisions unless there is evidence that racial animus was the motivating force behind a custom or policy that resulted in Okon's termination and about which the district had actual or constructive knowledge.

In support of her case, Okon provided evidence that of the 16 people terminated in the pharmacy division, 11 were black; that three other similarly situated employees—all of whom were outside her protected class—remained employed, even though they had less experience or were less qualified; and that the decision to terminate was based on factors outside those outlined in the RIF policy, including her failure to pass a skills test administered by the pharmacy department.

After discovery, the district moved for summary judgment, alleging that there was no evidence it had a policy or custom of racial discrimination. The trial court granted the district's motion, and the 5th Circuit affirmed. In doing so, the 5th Circuit explained that while Okon presented evidence that the RIF policy was deviated from, she did not present evidence that the RIF policy was repeatedly deviated from so as to discriminate against employees over a time sufficient to support the existence of a custom. The court reasoned that one act is not itself a custom.

Okon argued that the district's liability stemmed from the actions of its board in allegedly approving a deviation from the RIF policy. In rejecting Okon's argument, the court explained that there needed to be evidence that the board members themselves harbored racial animus and thus singled out Okon for termination. Allegations that the board's subordinates were racially motivated in recommending Okon for termination were insufficient unless there was evidence that the board either approved the recommendation

without evaluation or had knowledge that the recommendation was based on racial animus. The court pointed out that Okon failed to present any evidence or argument to meet her burden.

Finally, the court turned to Okon's failure to train argument as an alternative to impose liability on the district. The court recognized that a municipality's failure to train its employees can give rise to Section 1983 liability in certain circumstances. However, the inadequacy of training must be evident by a pattern of constitutional violations. Because Okon provided no such evidence, summary judgment for the district was appropriate.

Okon v. Harris County Hospital District, 5th Cir., No. 10-20603 (May 23, 2011).

Professional Pointer: Final decision-makers for an employer should evaluate written assessments to ensure that reduction recommendations are race-neutral and otherwise comport with the standards set forth in the RIF policy.

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Editor's Note: This article should not be construed as legal advice.

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