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Federal Court Decisions Recognizing Associational Discrimination Claims

In a recent decision, *Barrett v. Whirlpool Corp.*, the U.S. Court of Appeals for the Sixth Circuit clarified the standard for bringing associational discrimination claims.[1] In such claims, plaintiffs need not be members of a protected class; they may claim, instead, that they were discriminated against because they associate with, or advocate on behalf of, members of a protected class.

In *Barrett*, three former employees of Whirlpool Corp., all of whom are Caucasian, brought suit under Title VII and § 1981 of the Civil Rights Act[2] alleging that they were discriminated and retaliated against and made to suffer from a hostile work environment, because they associated with African-American co-workers.[3] The circumstances of the three plaintiffs were each somewhat different: One plaintiff, Lynette Barrett, alleged that her co-worker, Dale Travis, occasionally made racist comments when Barrett talked with an African-American friend. When Barrett told Travis she did not approve of his language, he called her a "bitch" and told her to mind her own business. Barrett alleged that she complained about Travis' racial comments to two different supervisors, both of whom failed to take any action. In addition, Barrett saw two instances of racist graffiti in a restroom in the workplace and on a maintenance cart. After Barrett complained to her supervisor about the graffiti, he made a report and had the graffiti painted over. Barrett also claimed that when she was friendly with African-American employees, her fellow Caucasian employees on the assembly line would not talk to her.

Another plaintiff, W. T. Melton, alleged that she heard Travis calling African-American employees "n*****s." She also complained that Travis would say "may the Klan be with you" on a weekly basis. In another incident, a Caucasian employee asked Melton how she could "stand the smell" of an African-American woman with whom Melton ate lunch regularly. Melton also claimed that Caucasian employees would "walk around" her in the hallway or give her strange looks when she was "friendly" with African-American co-workers. Melton further asserted that Whirlpool treated her worse than it treated other employees when she returned from medical leave.

Treva Nickens, the third plaintiff, alleged that a union official at Whirlpool had made racist jokes and used racial slurs, and a co-worker used the word "n*****r" on a routine basis.[4] Nickens also heard Travis use the term every day. Nickens worked next to him, and her supervisor laughed in response after she complained. Nickens claimed that her co-workers and another supervisor had told her that she needed to "stay with her own kind." When Nickens sought a promotion, her supervisor told her that she would never get the job—allegedly because of her relationships with her African-American co-workers. Although Whirlpool later terminated Travis, he nonetheless relayed a message to Nickens, through two other co-workers, that he would physically assault her for reporting him to management.

The U.S. District Court for the Middle District of Tennessee granted summary judgment for Whirlpool,[5] finding in part that the three plaintiffs (Barrett, Melton, and Nickens) had failed to show that their association with African-American co-workers rose above the level of workplace collegiality.[6] The District Court held that the plaintiffs had provided no evidence that their friendships "constituted anything other than the casual, friendly relationships that commonly develop among co-workers but that tend to be limited to the workplace."[7] The Sixth Circuit reversed this finding and clarified the standard used for such claims. The court reiterated that Title VII protects individuals who, though not members of a protected class, are victims of discrimination because of their association with protected individuals.[8] The court adopted the analysis used by the Seventh Circuit in *Drake v. 3M*, 134 F.3d 878 (7th Cir. 1998). Under *Drake*, if a plaintiff shows that he or she was discriminated against at work and that this occurred because of an association with members of a protected class, then the degree of association is irrelevant.[9]

In *Barrett*, the Sixth Circuit held that "[t]he absence of a relationship outside of work should not immunize the conduct of harassers who target an employee because she associates with African-American co-workers. While one might expect the degree of an association to correlate with the likelihood of severe or pervasive dis-

crimination on the basis of that association … that goes to the question of whether the plaintiff has established a hostile work environment, not whether he is eligible for the protections of Title VII in the first place."[10] Therefore, the Sixth Circuit concluded that the District Court's requirement—that there be a certain degree of association before a nonprotected employee may assert a viable association claim—was incorrect.[11]

When analyzing the plaintiffs' claims of a hostile work environment, the Sixth Circuit stated that "we cannot treat all incidents of harassment of African-Americans as contributing to a hostile work environment; rather, only harassment that was directed toward Plaintiffs themselves or toward others who associated with or advocated on behalf of African-American employees is relevant to our analysis, and only to the extent Plaintiffs were aware of it."[12] Using this standard, the court ruled that Barrett failed to establish that she had suffered from a hostile work environment because, under the totality of the circumstances, the single comment from Travis and the "cold shoulder" from a few coworkers were insufficient evidence of severe or pervasive harassment. The court found that Melton had also failed to establish a hostile work environment because she did not present evidence of discrimination directed toward her as a result of her association with, or advocacy on behalf of, African-American co-workers.

The court did find, however, that Nickens had established a genuine issue of material fact as to a hostile work environment because she was threatened with physical violence for reporting racist language. In addition, according to the court, Nickens had been regularly subjected to offensive comments about her relationship with an African-American coworker, which was allegedly the reason she was not promoted. Furthermore, the court found it important that Nickens had reported nearly all the incidents to different supervisors, all of whom had failed to take action, and some of whom allegedly harassed her for her association with her African-American co-workers. The court therefore affirmed the District Court's decision, except for the finding about Nickens' claim of a hostile work environment.

Aside from the Sixth and Seventh Circuits, the Second, Fifth, and Eleventh Circuits have specifically held that Title VII prohibits discrimination on the basis of association with members of a protected class. In *Holcomb v. Iona College*, the Second Circuit held that "an employer may violate Title VII if it takes action against an employee because of the employee's association with a person of another race."[13] In *Holcomb*, the plaintiff, a Caucasian man, alleged that Iona College terminated his employment as an assistant basketball coach because he was married to an African-American woman. The Second Circuit did not state whether a specific level of association is necessary for a successful claim.

In a case of first impression, *Deffenbaugh-Williams v. Wal-Mart Stores Inc.*, the Fifth Circuit concluded that "Title VII prohibits discrimination in employment premised on an interracial relationship."[14] The case was brought by a Caucasian woman who dated and subsequently married an African-American man, both of whom worked for Wal-Mart. The plaintiff brought suit alleging that she had been discriminated against based on her interracial relationship. Beyond stating that Title VII applies to interracial relationships, the Fifth Circuit did not further explain the level of association necessary to bring such a claim.

The Eleventh Circuit has also recognized association claims. *Parr v. Woodmen of the World Life Insurance Co.* involved a Caucasian man, who alleged that the defendant discriminated against him by not hiring him after discovering that he was married to an African-American woman.[15] The court found that the plaintiff could assert a claim of discrimination under Title VII, stating, "[w]here a plaintiff claims discrimination based upon an interracial marriage or association, he alleges, by definition, that he has been discriminated against because of *his* race. It makes no difference whether the plaintiff specifically alleges in his complaint that he has been discriminated against because of his race."[16] The court did not specify the level of association necessary to bring a claim under Title VII.

With the exception of the Sixth Circuit, the other circuits have not explained the degree of association needed to state an association discrimination claim under Title VII. District court decisions, however, provide additional guidance on this issue. In one such case, *Reiter v. Center Consolidated School District No. 26-JT*, a teacher filed suit under Title VII and 42 U.S.C. §§ 1983 and 1985 alleging, in part, that the defendant school district had not renewed her employment contract because of her association with members of the Hispanic community.[17] The District of Colorado held that the teacher's association with the Hispanic community provided a sufficient basis for her Title VII discrimination claim and denied the defendant's motion to dismiss the claim.[18] In *Whitney v. Greater N.Y. Corp. of Seventh-Day Adventists*, the plaintiff alleged that her employer, the Seventh-Day Adventist Church, discharged her because of a "casual social relationship" with an African-American man.[19] In this case, the Southern District of New York found that "the plaintiff's race was as much a factor in the decision to fire her as that of her friend. Specifying as she does that she was discharged because she, a [Caucasian] woman, associated with [an African-American man], her complaint falls within the statutory language that she was discharge[d] … because of [her] race."[20] Accordingly, the District Court found that the plaintiff had standing under Title VII and denied a motion to dismiss that claim.[21]

In contrast to the above cases, other district courts have required a higher degree of association. In *EEOC v. Parra*, the District of Oregon denied a Caucasian plaintiff's associational discrimination claim because,

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according to the court, he was merely "friends" with a Hispanic co-plaintiff.[22] The court stated the following: "The law requires something more than just friendship. … The alleged relationships between [the co-workers] do not rise to a level sufficient to invoke a claim of associational discrimination based on race."[23] Similarly, in *Zielonka v. Temple University*, the plaintiff brought a Title VII claim alleging that Temple University denied him tenure "because of his association with an African-American professor for whom plaintiff voted in an academic election for department chair."[24] The District Court for the Eastern District of Pennsylvania granted Temple University's motion for summary judgment in part because the plaintiff "did not have the type of relationship with [the African-American professor] that alone may reasonably support an assumption that plaintiff's race motivated the action he complains of. The cases in which courts have recognized a cause of action under Title VII have typically involved more substantial relationships."[25]

The Sixth Circuit's decision in *Barrett v. Whirlpool Corp.* brings to light another avenue of discrimination claims. The federal courts will continue to develop the law regarding the degree of association required to bring such claims. **TFL**

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Endnotes

[1]*Barrett v. Whirlpool Corp.*, No. 08-5307, 2009 U.S. App. LEXIS 3443, at *2 (6th Cir. Feb. 23, 2009).

[2]*See* 42 U.S.C. § 2000e *et seq.*; 42 U.S.C. § 1981.

[3]*Id.* The plaintiffs also alleged that they had been discriminated against because of their advocacy on behalf of their African-American co-workers. This column focuses only on the associational discrimination claims and does not discuss the advocacy or retaliation claims pled in *Barrett*.

[4]*Barrett*, 2009 U.S. App. LEXIS 3443, at *10.

[5]*Barrett v. Whirlpool Corp.*, 543 F. Supp. 2d 812 (M.D. Tenn. 2008).

[6]*Barrett*, 2009 U.S. App. LEXIS 3443, at *13–14.

[7]*Id.* at *19 (quoting Barrett, 543 F. Supp. 2d at 826).

[8]*Id.* at *16 (citing *Tetro v. Elliott Popham Pontiac, Oldsmobile, Buick, & GMC Trucks Inc.*, 173 F.3d 988, 994 (6th Cir. 1999) (holding that a Caucasian parent stated a Title VII claim after his employer took an adverse action against him once it learned his daughter was biracial)).

[9]*Id.* at *20–21. In a recent case heard by the Seventh Circuit, the court reiterated that it has "not yet decided whether an employer violates Title VII if it discriminates against an employee because the employee is involved in a relationship with a person of another race." *Ellis v. United Parcel Serv. Inc.*, 523 F.3d 823, 826 (7th Cir. 2008).

[10]*Barrett*, 2009 U.S. App. LEXIS 3443, at *21–22.

[11]*Id.* at *22.

[12]*Id.* at *28.

[13]*Holcomb v. Iona Coll.*, 521 F.3d 130, 138 (2d Cir. 2008).

[14]*Deffenbaugh-Williams v. Wal-Mart Stores Inc.*, 156 F.3d 581, 589 (5th Cir. 1998), vacated in part on other grounds, *Williams v. Wal-Mart Stores Inc.*, 182 F.3d 333 (5th Cir. 1999).

[15]*Parr v. Woodmen of the World Life Ins. Co.*, 791 F.2d 888, 889 (11th Cir. 1986).

[16]*Id.* at 892 (emphasis in original).

[17]*Reiter v. Ctr. Consol. Sch. Dist. No. 26-JT*, 618 F. Supp. 1458, 1459 (D. Colo. 1985).

[18]*Id.* at 1459–60.

[19]*Whitney v. Greater N.Y. Corp. of Seventh-Day Adventists*, 401 F. Supp. 1363, 1365 (S.D.N.Y. 1975).

[20]*Id.* at 1366 (brackets in original and added).

[21]*Id.* at 1366–67.

[22]*EEOC v. Parra*, No. 05-1521-HO, 2008 U.S. Dist. LEXIS 60097, at *14–17 (D. Ore. May 22, 2008).

[23]*Id.*

[24]*Zielonka v. Temple Univ.*, No. 99-5693, 2001 U.S. Dist. LEXIS 16732, at *1 (E.D. Pa. Oct. 15, 2001).

[25]*Id.* at *20. *See also Robinett v. First Nat'l Bank of Wichita*, No. 87-2561-S, 1989 U.S. Dist. LEXIS 2390, at *5 (D. Kan. Feb. 1, 1989) (explaining that "[t]he law requires something more than mere work-related friendship" to establish a Title VII action based on association).

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less than brilliant, and a few of whom may be loony or even malevolent. There is much to be learned, but like so many areas of Cyberia, one needs to exercise prudence and caution, especially when faced with the sort of anonymity one finds in epidemic proportions on the Wiki family of Web sites. **TFL**

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