Second Circuit: Employers Can't Avoid Court by Re-Hiring a Fired Employee

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When an employee is terminated on the basis of unlawful discrimination, the last thing that person wants to hear is a disingenuous offer to return to work in that very same discriminatory environment. Nevertheless, employers often use disingenuous offers of re-employment as a litigation tactic to try to cut off the aggrieved employee's claims. The Second Circuit Court of Appeals recently addressed this issue, holding that employers may still be liable under Title VII and the Family Medical Leave Act (FMLA) for unlawfully terminating employees, even if they later make an offer of re-employment to the employee before the termination takes effect. *See Shultz v. Congregation Shearith Israel of the City of New York,* No. 16 Civ. 3140 (2nd Cir. Aug. 10, 2017).

The Second Circuit vacated a lower court's dismissal of a discrimination and FMLA interference complaint filed by Wigdor LLP on behalf of Plaintiff Alana Shultz. Ms. Shultz worked as the Program Director at the Congregation Shearith Israel for eleven years. On July 21, 2015, just days after Shearith Israel became aware that Ms. Shultz was more than 16 weeks pregnant at the time of her wedding, the Congregation fired Ms. Shultz, but told her that she needed to continue working through August 14th.

After the July 21st termination, Ms. Shultz retained Wigdor LLP, who sent Shearith Israel a detailed letter placing it on notice that its conduct constituted unlawful discrimination. On August 5, 2015, Ms. Shultz received a three-sentence letter from Shearith Israel offering her job back. Based on the Congregation's discriminatory conduct, which began with her firing on July 21st and continued unabated even after she received the offer of re-employment on August 5th, Ms. Shultz rejected Shearith Israel's disingenuous offer.

The lower court dismissed Ms. Shultz's claims, holding that no adverse employment action took place because her termination was rescinded before her final day of work. The appeals panel, however, reversed the decision, holding that Ms. Shultz's Title VII cause of action began accruing when she received her termination notice, despite the subsequent re-employment offer made before the termination took effect.

The decision provides important protection for workers, and makes it clear that terminated employees in the Second Circuit (comprised of New York, Connecticut and Vermont), are entitled to litigate their discrimination cases, even if they are offered re-employment once the employer is placed on notice of their illegal conduct. In addition, employers in the Second Circuit now have one less "tool" in their arsenal to try to cut off a fired employee's access to court.

Wigdor LLP has extensive experience representing employees regarding unlawful termination and discrimination. If you have any questions concerning a discriminatory act taken against you, the attorneys and staff at Wigdor LLP would be happy to speak with you about your rights.

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