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# Weekly Employment Brief

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**A Less Appealing Job Reassignment Does Not Constitute Adverse Action For Title VII Claim**

The Fourth Circuit Court of Appeals (encompassing mid-Atlantic states) recently held that reassignment alone, without any accompanying detrimental effect on the employee's opportunities for promotion or professional development, does not constitute adverse action and therefore does not support a Title VII discrimination claim.

In *Aaron C. James v. Booz-Allen & Hamilton, Inc.*, Plaintiff Aaron James, an African-American electrical engineer, worked for Defendant Booz-Allen & Hamilton, Inc. ("BAH") as Project Manager for the firm's contract with a Washington, D.C. area Transit Authority ("WMATA"). WMATA expressed displeasure with BAH's overall management of the project, and specifically noted that James did not work well with its staff. In response to these concerns, BAH reassigned James to a different position. He retained oversight of the WMATA contract, but he no longer directly managed WMATA employees. BAH then hired a white male to fill the management function. James experienced no loss in pay or promotional opportunity as a result of the reassignment (and indeed, following the reorganization, James received a five percent salary increase and a $15,000 bonus). However, James sued BAH, claiming he was reassigned because of his race, in violation of Title VII.

The district court rejected James' claim based on his failure to produce evidence that BAH took an adverse employment action against him. The district court found that BAH did not demote James, reduce his salary or limit his promotional opportunities. Rather, BAH merely transferred James' responsibilities. The appellate court agreed, stating that "[t]he mere fact that a new job assignment is less appealing to the employee . . . does not constitute adverse employment action." Rather, the court explained, a reassignment must have some "significant detrimental effect" on the employee's promotion or professional development opportunities to support a discrimination claim.

This decision demonstrates there are limits to the type of employer actions that can constitute an adverse employment action for discrimination purposes.

**Terminating Employee For Violation Of Harassment Policy Not Pretext For Religious Discrimination**

The Ninth Circuit Court of Appeals recently held that an employee who violated company policy when she harassed an openly homosexual subordinate could not demonstrate that her employer terminated her because of her religion.

In *Evelyn Bodett v. CoxCom, Inc.*, plaintiff Evelyn Bodett, an evangelical Christian and quality assurance manager for defendant CoxCom, supervised Kelley Carson, an openly gay employee. During their employment, Bodett told Carson that homosexuality was against her Christian beliefs. Later, when Carson was emotionally distraught over the end of her relationship with her partner, Bodett told her: "God's design for a relationship was between a man and a woman," and "homosexuality is wrong, [and] considered by God to be a sin." Carson complained to CoxCom about Bodett's comments, and she later transferred to a location away from Bodett. Bodett admitted that she made the offensive comments to

Carson, and the company terminated her for a gross violation of its written anti-harassment policy. Bodett then sued CoxCom for religious discrimination under Title VII and various Arizona statutes.

The district court dismissed Bodett's claims, and the Ninth Circuit affirmed. The court held that Bodett failed to present any evidence which would give rise to an inference that CoxCom terminated her because of her religious beliefs, while CoxCom articulated a legitimate, nondiscriminatory reason for Bodett's termination–her clear violation of the anti-harassment policy. Although Bodett presented evidence that CoxCom normally instituted progressive discipline for violations of its anti-harassment policy, the court concluded that its decision to immediately terminate did not create an inference of discrimination, primarily because the written policy permitted such aggressive discipline if the facts warranted it.

This case demonstrates the importance of a clear, written anti-harassment policy on which employers may rely when articulating a legitimate, non-discriminatory reason for a termination or other discipline. It further confirms that courts will not punish employers for swift and decisive employee discipline, if the misconduct justifies such action and if the employer's policies do not preclude such immediate discipline.

**Employee Terminated For Downloading Pornography Not Entitled To Unemployment Benefits**

A Pennsylvania court recently held an employee terminated for downloading pornography onto his work-provided laptop was not eligible for unemployment benefits because his behavior constituted "willful misconduct." In *Edward Burchell, Jr. v. Unemployment Compensation Board of Review*, Burchell was a systems programmer at the University of Pittsburgh. University policy prohibited employees from using its computers "for the creation, design, manufacture, preparation, display, or distribution of any written or graphic obscene material." In 2002, the University terminated Burchell after discovering pornographic material on his computer's hard drive.

Burchell subsequently applied for unemployment benefits; however, Pennsylvania unemployment compensation law, like California law, provides that an employee is not entitled to benefits for any week in which he is unemployed due to discharge for willful misconduct connected with the employee's work. Pennsylvania law defines "willful misconduct" as actions in deliberate violation of the employer's rules or a disregard of the standard of behavior that the employer has a right to expect of an employee. Burchell's application initially was granted, because the University did not prove willful misconduct. On an administrative appeal, however, the University successfully argued that the existence of pornographic images on Burchell's computer, combined with evidence Burchell was the only person with knowledge of the password on the computer, was sufficient evidence of willful misconduct.

Burchell appealed the denial of benefits to a Pennsylvania court, claiming the University's policy could only legally extend to misconduct at work and the University could not prove his actions took place at work. The court rejected this argument because the University properly could prohibit its employees from using its *equipment* in an unauthorized manner, even if accomplished away from work. Moreover, the court concluded that even absent an express rule, Burchell's behavior violated reasonable standards expected of an employee.

This case demonstrates that even under the employer-friendly unemployment compensation system, some employee behavior is simply not acceptable.