American Lawyer Media's
LAW.COM
First in Legal News and Information

Online Feature

May 21, 2008

ALM

Circuit Courts Address Discrimination Based on Interracial Association

CARLA J. ROZYCKI AND
DARREN M. MUNGERSON
SPECIAL TO LAW.COM
MAY 21, 2008

Two federal appellate courts have recently addressed whether Title VII prohibits discrimination based on an employee's association with a person of a different race. In a case of first impression for the 2nd U.S. Circuit Court of Appeals, the court held that an employer may violate Title VII by taking action against an employee because of his association with a person of a different race. *Holcomb v. Iona College*, No. 06-3815 cv, --- F.3d ---, 2008 WL 852129 (2d Cir. Apr. 1, 2008). The 7th U.S. Circuit Court of Appeals concluded that it did not need to reach the issue in *Ellis v. United Parcel Service* No. 07-2811, – F.3d – 2008 WL 1869553 (7th Cir. Apr. 29, 2008), because even if such claims were cognizable under Title VII, Ellis did not put forward sufficient evidence that UPS enforced its non-fraternization policy in a disparate fashion based on interracial relationships to survive summary judgment.

In *Holcomb*, the plaintiff, a white assistant coach of the Iona College basketball team, alleged that he was fired because he was married to an African-American woman. The court 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." *Holcomb* at *1.

The court noted that early cases addressing this issue reached the opposite conclusion, reasoning that the language of Title VII did not support such claims. Id. at *8. See, e.g., *Ripp v. Dobbs Houses, Inc.*, 366 F. Supp. 205, 208-09 (D.Ala. 1973) (quoting Title VII's language, 42 U.S.C. Section 2000e-2(a), and holding a white employee's claim that he was terminated due to his association with black employees was not cognizable under Title VII which prohibits discrimination against an individual "because of such individual's race."); *Adams v. Governor's Comm. on Postsecondary Educ.*, No. C80-624A, 1981 WL 27101, at *3 (N.D. Ga. Sept. 3, 1981) (holding that a white man married to an African-American woman failed to state a claim under Title VII because "[n]either the language of the statute nor its legislative history supports a cause of action for discrimination against a person because of his relationship to persons of another race.").

JENNER & BLOCK'S CARLA ROZYCKI

JENNER & BLOCK'S DARREN MUNGERSON

The 2nd Circuit rejected this restrictive reading of Title VII, reasoning: "[W]here an employee is subjected to adverse action because an employer disapproves of interracial association, the employee suffers discrimination because of the employee's own race." Id. at *9. The court looked to opinions of district judges in the 2nd Circuit, including *Rosenblatt v. Bivona & Cohen, P.C.*, 946 F.Supp. 298, 300 (S.D.N.Y. 1996), where the district court reasoned: "Plaintiff

has alleged discrimination as a result of his marriage to a black woman. Had he been black, his marriage would not have been interracial. Therefore, inherent in his complaint is the assertion that he has suffered racial discrimination based on his own race."

In recognizing associational discrimination claims under Title VII, the 2nd Circuit joins the 6th, 5th and 11th Circuits which have similarly ruled that Title VII protects employees from discrimination based on their association with a person of a different race. See, e.g., *Tetro v. Elliot Popham Pontiac, Oldsmobile, Buick & GMC Trucks, Inc.*, 173 F.3d 988, 994-95 (6th Cir. 1999) (holding that white plaintiff with bi-racial child stated a claim under Title VII based on his own race "even though the root animus for the discrimination is a prejudice against the biracial child"); *Deffenbaugh-Williams v. Wal-Mart Stores, Inc.*, 156 F.3d 581, 588-589 (5th Cir. 1998), vacated in part on other grounds by *Williams v. Wal-Mart Stores, Inc.*, 182 F.3d 333 (5th Cir. 1999) (holding that a jury could find that a white woman was discriminated against under Title VII due to her relationship with an African-American person); *Parr v. Woodmen of the World Life Ins. Co.*, 791 F.2d 888, 891-92 (11th Cir. 1986) ("Where 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.").

In *Ellis*, the plaintiff, an African-American manager, was fired for violating a non-fraternization policy at UPS by dating and marrying an hourly employee. The hourly employee was white. Ellis alleged that other managers who were not in interracial relationships who violated the non-fraternization policy were not fired, and that UPS discriminated against him on the basis of his interracial relationship. The 7th Circuit noted that "We have 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* at *3; see *Ineichen v. Ameritech*, 410 F.3d 956, 962 (7th Cir. 2005) (declining to rule on the validity of associational discrimination claims). However, the 7th Circuit declined to reach the issue in *Ellis* because, even if associational discrimination violated Title VII, Ellis had not presented enough evidence to survive summary judgment. *Ellis* at *3.

The reasoning of the *Holcomb* decision may provide authority to support the notion that discrimination based on sexual orientation or the same sex of one's partner is actionable under Title VII as sex discrimination. The language of Title VII does not prohibit employers from discriminating based on an employee's sexual orientation or same-sex relationships, just as the language of Title VII does not prohibit employers from discriminating against employees based on their interracial associations. The court in *Holcomb* reasoned that discrimination against a white employee because of his relationship with a black woman was discrimination on the basis of his race (white) -- had he been black, his marriage would not have been interracial. Applying that reasoning to a claim by a male or female employee in a same-sex relationship, but for the employee's sex, the employee would not have been in a same-sex relationship, so discrimination against the employee for being in a same-sex relationship is based on the employee's sex. Time is needed to see whether this reasoning will form the basis for the extension of Title VII sex discrimination prohibitions to employees due to their same-sex relationships. However, in light of the developing law, employers are well advised to base adverse employment decisions on legitimate business factors other than employee interracial or same-sex relationships.

Carla J. Rozycki is a partner in the Chicago office of Jenner & Block and is the chair of the firm's labor and employment practice. She also serves as co-chair of the firm's Positive Work Environment Committee and as firm counsel (employment). Darren M. Mungerson is of counsel in the Chicago office of Jenner & Block and a member of the firm's labor and employment practice. *They would like to thank Suzanne M. Courtheoux, an associate attorney at Jenner & Block, for her assistance on this article.*