

Eleventh Circuit Explains How Protected Activity Loses Its Protected Status in *Gogel v. Kia Motors*

Title VII of the Civil Rights Act protects an employee's conduct of complaining about Title VII violations. The Eleventh Circuit, however, has now provided the framework for when an employee's otherwise protected conduct can lose that protection.

The Eleventh Circuit Court of Appeals issued its opinion in *Gogel v. Kia Motors*, affirming summary judgment in favor of defendant-employer Kia Motors, finding that, "when the means by which an employee expresses her opposition so interferes with the performance of her job duties that it renders her ineffective in the position for which she was employed, this oppositional conduct is not protected under Title VII's opposition clause."

Gogel, a former Kia employee, held the position of team relations manager within the human resources department. Gogel's main job duties included handling the receipt of allegations by employees of harassment and discrimination, investigating those allegations, resolving conflicts, and advocating for team members in the best interest in the company. Gogel and her team were also tasked with maintaining employee morale and interacting with complaining employees in an effort to internalize the resolution of any complaint and thereby avoid, if possible, the external resolution of that complaint, such as filing of an EEOC charge and a subsequent lawsuit.

Gogel took issue with the way in which Kia handled a specific employee investigation. She also felt that Kia discriminated against its female employees. After complaining of discrimination, Gogel filed a charge of discrimination with the EEOC on her own behalf. Kia did not take issue with this charge and, in fact, gave Gogel a bonus after learning of her charge of discrimination. The crux of the issue revolved around Gogel's handling of the aforementioned employee investigation. Gogel not only encouraged this employee to file a charge of discrimination against Kia, but Gogel also provided the employee with her lawyer's contact information.

The Eleventh Circuit held that, while filing a charge of discrimination on her own behalf was protected activity under Title VII, soliciting another employee to sue the company is not protected activity under Title VII given Gogel's position within the company. The court explained that the solicitation of a subordinate to sue the company and providing that subordinate with the name of a lawyer, so conflicted with Gogel's duties as the team relations manager, that the conduct rendered her ineffective in her position as a matter of law. Thus, an employee tasked with investigating employee complaints, such as those within a human resources department, cannot encourage employees to take action against the employer and maintain his or her protected status under Title VII's opposition clause.

The court expanded its ruling outside of the current case where the plaintiff-employee is tasked with investigating employee complaints and stated that, "even if an employee's oppositional conduct does not interfere with the employee's performance of her own duties, it can still be deemed unreasonable — and thereby lose its protected status — if the opposition is expressed in a manner that unreasonably disrupts other employees or the workplace in general." In other words, an employee's Title VII complaint based on oppositional retaliation can lose its protected status if the way in which the employee complains is not reasonable. This holding adds another sword in an employer's arsenal of defenses against a claim of retaliation under Title VII.



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