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Demasters v. Carilion Clinic: Elimination of the "Manager Rule" in Title VII Litigation

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Introduction

In a recent case, *Demasters*, the United States Court of Appeals for the Fourth Circuit, determined the "manager rule," which has its roots in Fair Labor Standards Act litigation, should not apply in Title VII litigation. *Demasters v. Carilion Clinic*, No. 13-2278, WL 4717873 (4th Cir. 2015). Under the rule, in order for an employee to be engaged in protected Title VII activity, he must step out of his role of representing the company. I will discuss the rule and its application in greater detail later in this article.

Factual History

In *Demasters*, Neil Demasters (Mr. Demasters) worked as an employee assistance program (EAP) consultant for Carilion. In this role, he reported employee complaints to Carilion's human resources department. In late 2008, John Doe (Doe), a Carilion employee, consulted Mr. Demasters regarding his manager's sexually suggestive behavior. After listening to Doe's complaints of harassment, he had Doe sign a release enabling him to communicate directly with Carilion's human resources department on Doe's behalf. Mr. Demasters reported Doe's complaints to the human resources department, which prompted Carilion to investigate the allegations and ultimately led to the termination of Doe's manager.

Following his termination, Doe continued complaining to Mr. Demasters regarding continued harassment he received from co-workers supporting his recently terminated manager. Mr. Demasters contacted Carilion's human resources department to inform them of Doe's continued complaints of harassment. During a subsequent conversation with the human resources department, Mr. Demasters stated his belief that Doe's complaints were being handled improperly.

Following Mr. Demasters' last conversation with the human resources department, he did not communicate with Doe and was unaware of the legal remedies Doe pursued against Carilion. One day, a few years later, a manager for Carilion, called Mr. Demasters to inform him Doe had filed a complaint against Carilion based on alleged violations of Title VII's anti-retaliation provision. During the conversation, the manager questioned Mr. Demasters regarding his involvement with Doe's complaints of harassment. The manager stated that Doe and Carilion settled their claim prior to trial. Shortly thereafter, a few high-ranking human resources professionals called Mr. Demasters into a meeting. During the meeting, they questioned him regarding his involvement with Doe's complaints. They asked

Mr. Demasters why he had not taken a pro-employer position and also told him that he left Carilion "in a compromised position." Two days after this meeting, Mr. Demasters was fired for failing to act in a manner consistent with the best interests of Carilion.

Following this, Mr. Demasters filed a Complaint against Carilion in federal district court. His Complaint contained allegations that Carilion violated Title VII's anti-retaliation provision. In response, Carilion filed a Motion to Dismiss, alleging that Mr. Demasters had not properly alleged a prima facie case under Title VII's Opposition Clause. The District Court granted Carilion's Motion to Dismiss and Mr. Demasters timely appealed to the United States Court of Appeals for the Fourth Circuit.

Analysis

On appeal, the Court examined (1) whether, pursuant to Title VII, Mr. Demasters had engaged in protected behavior; and (2) whether the manager rule should apply in Title VII retaliation claims. Under Title VII, in order to establish a prima facie retaliation claim, a plaintiff must demonstrate three elements: (1) that he engaged in a *protected activity*; (2) that his employer took an adverse employment action against him; and (3) that there was a causal link between the two events. *Boyer-Liberto v. Fontainebleau Corp.,* 786 F.3d 264, 281 (4th Cir. 2015).

The Court ultimately determined that Mr. Demasters had engaged in protected behavior, and that he had satisfied the other elements necessary to establish a prima facie retaliation claim and therefore his claim was improperly dismissed. In making this determination, the Court carefully examined other analogous cases, as well as the broad purpose of Title VII—which is to eliminate discrimination in the workplace. The Court examined Mr. Demasters' Complaint, in which he described: (1) his discussions with Doe regarding his manager's behavior, (2) his role as an advocate for Doe, (3) his discussion with other EAP colleagues to devise a plan to stop the workplace harassment, and (4) his conversation with the human resources department regarding his opinion that they were mishandling Doe's complaints. The Court determined that, after reviewing all of these factors, Mr. Demasters' behavior amounted to protected activity for which he could bring a claim. However, because of the manager rule, the Court's analysis did not stop there.

Applicability of Manager Rule

The Court noted that the manager rule has been applied in some Fair Labor Standards Act retaliation claims. The rule requires that an employee "step outside of his or her role of representing the company" in order to engage in protected behavior. *McKenzie v. Renberg's Inc.,* 94 F.3d 1478, 1486 (10th Cir. 1996). Here, Mr. Demasters successfully argued that the manager rule should not apply in Title VII litigation, and the Court agreed. The Court outlined several reasons the rule should not apply in Title VII cases.

First, the Court highlighted that Congress never intended to exclude a class of workers from retaliation protection based solely on their job descriptions. The Court also discussed the breadth and scope of Title VII's anti-retaliation provision, which has been held to "provide broad protection from retaliation," and to cover a wide range of conduct. *Burlington N.*, 548 U.S. at 67.

Additionally, the Court focused on an affirmative defense employers can avail themselves of when an employee does not take advantage of his employer's internal investigation procedures—this is known as the *Farragher/Ellerth* defense, which did not apply in this case. The Court concluded that applying the manager rule in the context of Title VII litigation would discourage employees from

reporting concerns of discrimination and would have a *chilling effect* on those employees, such as Mr. Demasters, who are charged with reporting discrimination on behalf of co-workers. The Court believed this would lead to claims of discrimination going unreported and unsolved. Carilion argued—unsuccessfully—that failing to apply the manager rule in Title VII litigation would lead to increased litigation. Although the Court acknowledged Carilion's concern, its ultimate decision hinged on the chilling effect the rule's application would have on reports of discrimination in the workplace. Ultimately, the Court rejected the manager rule in the context of Title VII retaliation claims, reversed and remanded the case to federal district court.

Best Practices for Employers

Employers should be proactive with respect to implementing (or drafting) neutral policies regarding discrimination against employees. Employers should:

1. Investigate each complaint of discrimination thoroughly;
2. Provide training for employees—especially human resources professionals—regarding handling complaints of discrimination; and
3. Follow through with necessary disciplinary action, per company policy, if necessary.

About the Author

Sidney O. Minter practices employment law at Teague Campbell Dennis & Gorham, LLP. His clients include businesses in many industries including: staffing, healthcare, financial services, restaurant and retail.