

## Eleventh Circuit Finds HR Employee's Assistance with EEOC Charge Reasonable

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In late September, the Eleventh Circuit reversed a grant of summary judgment for Kia Motors Manufacturing of Georgia, Inc. on race and national origin retaliation claims brought by one of its HR managers. In the split decision, the majority found that the HR manager engaged in protected activity under Title VII, despite Kia's claim that the manager encouraged or even solicited other employees' EEOC charges.

Andrea Gogel, the manager of Kia's Team Relations Department, filed a charge against Kia with the EEOC in November 2010 alleging gender and national origin discrimination. Two other Kia employees filed EEOC charges not long after Gogel, each represented by the same law firm as Gogel. In January of 2011, Kia terminated Gogel, believing that she had solicited or encouraged Kia employees to file a lawsuit against the company. Two of Gogel's subordinates indicated that she met with the other filing employees multiple times around November 2010. Notably, Gogel gave one of the reporting employees, Diana Ledbetter, the name of her attorney.

The majority decision recognized that Title VII's opposition clause usually protects employees who help a coworker file an EEOC charge. However, an employee can lose protected status if the employee carries out the opposition in an unreasonable way. Reasonableness is evaluated case by case, and Eleventh Circuit precedent indicates that HR employees who violate complaint reporting policies may have acted unreasonably.

In this case, the majority noted that Gogel reported and tried to investigate the claims leading to Ledbetter's EEOC charge. She was directed by her supervisors to cease the investigation. The majority found that Gogel exhausted her obligations under Kia's complaint reporting framework due to Kia's conduct. Further, where Ledbetter's complaints had been ignored for years, the majority found it reasonable for Gogel to provide Ledbetter with her attorney's name. While an HR employee's responsibilities might make assisting with an EEOC charge seem unreasonable, the majority found that Title VII extends opposition protection to all employees, even those whose primary obligation is to handle employee disputes without litigation. Applying the balancing test, the majority found that Gogel's actions were reasonable, protecting her under Title VII.

Justice Carnes dissented, observing that giving Ledbetter the name of an attorney made Gogel ineffective in her role such that her conduct should not be protected. Further, the dissent warned that protecting an HR employee whose efforts to resolve a dispute were unsuccessful will create disaster for employers.

The main takeaway of this case is that internal investigation procedures have to function properly. Otherwise, employers are not justified in discharging HR employees that assist other employees with their EEOC charges of discrimination.

The case is *Gogel v. Kia Motors Mfg. of Georgia, Inc.*, Case No. 16-16850.

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