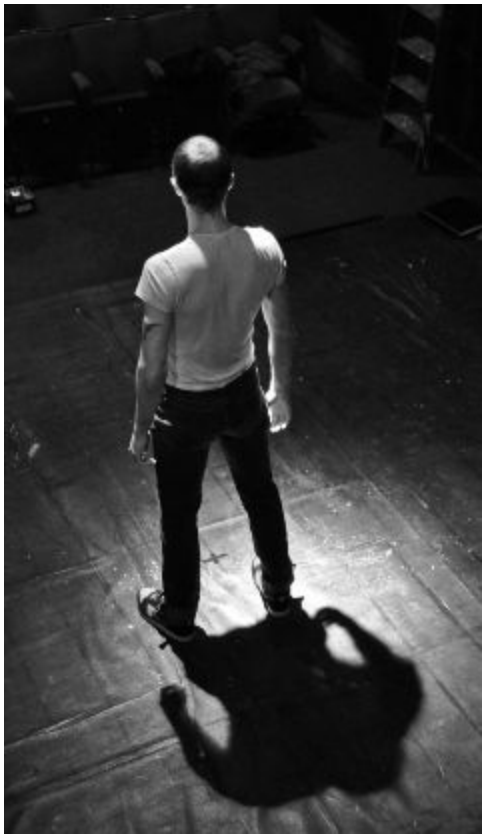
Court Rejects "Alter Ego" Doctrine As Basis for Suing Supervisor for Discrimination

By Daniel Schwartz on February 9th, 2012



The Second Circuit has long held that supervisors cannot be sued in their individual capacity under Title VII. But can an employee do an end run around that by arguing that the supervisor is the "alter ego" of the company?

Well a few federal courts outside Connecticut have said that under the "alter ego" doctrine, a supervisor may be held liable as an employer when "the supervisor's role is more than that of a mere supervisor but is actually identical to the employer."

A case decided by a federal court in Connecticut recently rejected that notion in a pregnancy discrimination claim brought by a former attorney against her law firm and the firm's principal and single shareholder. While the court did not rule out the possibility of that doctrine being used, it suggested that it would be an unlikely event where the supervisor abused the corporate form.

> Employing the alter ego doctrine to accomplish the same result would undermine the purpose of the doctrine and constitute an end run around the [Second Circuit's] Tomka decision. Taking into account the fact that [the employer] has posted a bond for $130,000—an amount reasonably related to [the employee]'s alleged damages—and that [the employee] has offered no evidence that [the supervisor] or previous partners abused [the employer]'s corporate form, there is no need to employ the alter ego doctrine to hold [the supervisor] personally liable for actions he took as [company] President.

The case is also notable in concluding that the plaintiff's claims of pregnancy discrimination could proceed to trial. The court concluded that the "facts" raised by the employee — including a claim that, as a new mother, she was referred to as "Pumper Girl", were sufficient to send it to a jury. (As with all summary judgment motion decisions, readers are cautioned that the court has to read all factual inferences in the employee's favor, and such a decision does not indicate that the employer is "guilty" of anything.)

For employers, it's important to understand that even though the anti-discrimination laws can be broad, they do have limits. Even so, while the employer may have defeated the "alter-ego" claim, it will still face a potential jury trial on allegations that the plaintiff was referred to as "Pumper Girl". They have have won a battle, but the real war is still on.

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