

WEB EXCLUSIVE - THAT'S MY STORY AND I'M STICKING TO IT: A LOOK AT THE "HONEST BELIEF" RULE

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You find out an employee launches a false complaint of discrimination or harassment and you terminate them for their dishonesty. There's no harm in that, right? Think again. There has been a recent trend of cases where courts grapple with the "honest belief" rule and its impact on Title VII retaliation claims, and the results aren't always easy to swallow.

On the one hand, as long as an employee has a "reasonable belief" that the conduct they are complaining about is unlawful, an employer can still be found liable for Title VII retaliation if it takes action against the employee—even if the conduct complained about is ultimately found lawful. On the other hand, an employer might *not* be found to have violated Title VII's retaliation provision if it "honestly believes" an employee has falsely engaged in protected activity.

The issue arises when there is a genuine issue of material fact on these issues—which, in this instance, could be related to whether the employer believed that the employee's complaint is false. In cases where a plaintiff attacks the employer's credibility regarding their purported "honest belief," courts may hesitate to dismiss the action through a summary judgment motion, instead sending any credibility issues to be decided by a jury. A review of recent case law demonstrates how this issue could play out.

CASE LAW SURVEY

In *EEOC, et al v. HP Pelzer Automotive Systems, Inc.*, the Eastern District of Tennessee denied the employer's motion for summary judgment, declining to apply the "honest belief" rule. In that case, both parties agreed that the employer

terminated the plaintiff because she filed a complaint of sexual harassment. However, the employer asserted that the complaint was false, while the plaintiff asserted the complaint was true and that the employer was lying when it said that the complaint was false.

Under the summary judgment standard, which requires the court to make inferences in a light most favorable to the nonmoving party, the court inferred that the plaintiff's complaint was true—which led the “honest belief” rule to be placed in direct tension with the summary judgment standard. The court said that, although employers were generally protected under the “honest belief” rule even if their conclusion turns out to be incorrect, it could not ascertain the reasonableness of the defendant's belief without ruling on the credibility of the plaintiff or the witnesses the defendant interviewed, which was a question for the jury.

However, in *Villa v. CavaMezze Grill, LLC*, the 4th Circuit Court of Appeals held that firing an employee who reported alleged sexual harassment of other female employees by her manager did not violate Title VII because the employer honestly believed she had fabricated the report. Unlike the *HP Pelzer* case, the alleged sexual harassment was not directed at the plaintiff, but rather her coworkers. While courts will still examine a coworker's subjective belief in such a situation, a company's investigation will inevitably be different when evaluating the subjective belief of an individual reporting harassment of another versus the victim self-reporting the harassment. Also, the plaintiff in *Villa* conceded that she was lying about her complaint, so the 4th Circuit held it unnecessary to evaluate the adequacy of the investigation.

As demonstrated above, courts approach the “honest belief” rule from different angles, and the resolution may be hard to predict. Judges are tasked with the heavy burden of balancing competing policy considerations: employees being deterred from filing discrimination actions versus employers being held powerless to discipline employees for filing false charges, lying to investigators, and even defaming others by making false complaints.

WHAT YOU CAN DO TO AVOID TROUBLE

In order to steer clear of such a predicament, here are some practical tips to help you determine the right approach should such a scenario arise at your workplace.

- **Use neutral decision makers when investigating complaints and disciplining employees.** A neutral decision-maker increases your credibility when the veracity of an investigation or termination decision is being evaluated.
- **Keep consistent records for performance evaluations, disciplinary actions, and terminations.** Not only is consistency key, but it will be helpful, especially at the

summary judgment stage, as to the legitimacy of your disciplinary practices. The more you can show that your proffered decision was reasonable, consistent, and honest, the better chance you have of successfully invoking the “honest belief” rule.

- **When handling conflicts, avoid calling employees “liars” unless they unequivocally admit to lying.** Not only is calling someone a liar a show of bad manners, it is not always accepted by courts as a legitimate, nondiscriminatory business reason for discipline. Case law readily applies the “honest belief” rule when the employee admits they lied, but if there is a dispute as to whether you actually believed the employee lied, it could preclude summary judgment in your favor.

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