



Retaliation Claim Can Survive Dismissal of Discrimination Claims

In recent years there has been a rise in successful employment discrimination retaliation claims filed with the EEOC and state agencies. The dismissal of an underlying discrimination charge does not necessarily doom the retaliation claim that is premised on that charge. On appeal, the [7th U.S. Circuit Court of Appeals](#) decision reinstated the retaliation claim, finding that a [prima-facie case](#) had been established, even though the underlying discrimination claims were not sufficiently supported by the facts.

Pantoja v. American NTN Bearing Manufacturing Corp., 7th Cir., No. 06-1252 (Aug. 6, 2007).

When Juan Pantoja, a Hispanic male, was terminated from his job as a maintenance mechanic for American NTN Bearing Manufacturing Corp. in 2002, he claimed both workplace discrimination and that his firing was motivated by the fact that he had filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC). The lower court dismissed both Pantoja's claims of race/national origin discrimination and retaliation. Pantoja began working for NTN in 1993.

During the course of the EEOC's investigation of Pantoja's complaint and the subsequent lawsuit, the company provided a variety of reasons for the firing at various points during the litigation, including "repeated absenteeism," "unsatisfactory work record" and "leaving work without permission." Pantoja alleged that the true basis of his firing was race/national origin discrimination.

The 7th Circuit upheld the lower court's dismissal of Pantoja's discrimination claim. However, the appellate court found that Pantoja sufficiently alleged a claim of retaliation, based largely on the temporal proximity of his unsuccessful bid for promotion and complaints of unfair treatment to his procedurally deficient performance warnings and ultimate termination. The court specifically held that the "timing of Pantoja's warnings is suspicious enough to suffice to support his prima facie case" of retaliation.

Professional Pointer: This case should not be interpreted by employers as a warning against disciplining employees who have complained about workplace harassment or discrimination. To institute such a blanket policy could lead to more serious problems, including possible workplace safety issues or lowered morale among employees. However, the case certainly is a reminder to carefully follow procedures when instituting such warnings. If, in this case, NTN had met with Pantoja to discuss his alleged performance deficiencies and any warnings administered, and if the company had applied its disciplinary policies consistently instead of selectively, the ongoing issues and possible legal liability for retaliation may have been avoided.

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