

Bias Claim Over Transfer Reinstated

Description

PS&H employment partner, Alicia Samolis, was asked by Rhode Island Lawyers Weekly to comment on a recent decision by the 1st U.S. Circuit Court of Appeals in *Caraballo-Caraballo v. Correctional Administration, et al.*. The Court reversed the district court summary judgment and ruled that the plaintiff employee should be given the chance to show that her transfer was based on gender bias despite her replacement having superior educational credentials.

Alicia, though not involved in the case, was quoted in the article published by Lawyers Weekly, providing an analysis of the Court's determination. She noted that the rule in an earlier case – *Johnson v. University of Puerto Rico* – is not applicable when an employee's transfer is challenged as discriminatory. In *Johnson*, the Court held that "a job applicant who does not possess the requirements specified by the employer cannot rely on her experience and reputation to show that she is qualified for the position sought."

Alicia noted, "That might be the standard when someone is applying for a job...That's not how it works when someone is in a job and gets transferred out." She also found it significant that the Court rendered their decision at the prima facie stage, in which the plaintiff employee had the burden of establishing her qualifications yet not addressing whether or not the employer had a non-discriminatory basis for transferring her.

According to Alicia, "The employer could come back and say that the legitimate non-discriminatory reason was that men who replaced her were more qualified....The fact that the plaintiff's direct supervisor thinks she's a good employee and wants her in the position would hurt the employer's case."

Click [here](#) to read the full article.

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