

Court of Appeals Reinstates Bias Suit Involving Claims of Retaliation

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PS&H employment partner and Chair of the Labor & Employment Group, Alicia Samolis, provided comment to RI Lawyers Weekly on the recent 1st U.S. Circuit Court of Appeals decision in *Carlson v. University of New England*. The Court's decision reinstated a case involving claims of a retaliatory transfer of a professor following her complaints of sexual harassment by her supervisor.

The 1st Circuit panel held the plaintiff could bring the claim despite the fact that she undisputedly requested the transfer. The Court reasoned that there were "genuine disputes of material fact" over whether or not the university misled her regarding her transfer given that the plaintiff indicated that she would take the transfer if she could continue to her job and teach certain courses.

In the article published by Lawyers Weekly, Alicia, who was not involved in the case, disagreed with the 1st Circuit panel's conclusion that a reasonable jury could find the transfer to have been retaliatory. The plaintiff continued to teach her preferred courses after being transferred with the change in course assignments not occurring until more than a year later.

"There has to be some sort of expiration date on that," Alicia said. "There had to be a reasonable presumption that things might change. The court doesn't seem to recognize that here."

Alicia offered a very simple solution in the article – the employer [university] should have put the terms of the agreed-upon transfer in writing.

"The employee should have been given an offer letter memorializing the details of the transfer, making clear that she was not guaranteed anything," Alicia said.

Alicia explained that such an offer letter could have reiterated that the plaintiff remained an at-will employee and that teaching assignments could be changed at the university's discretion – just like any other job.

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

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