

## Court of Appeals Upholds Termination of Airport Security Employee

September 20, 2018

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 *Bonilla-Ramirez v. MVM, Inc., et al.* The Court's decision upheld the termination of an employee of a private security company providing services to U.S. Immigration and Customs Enforcement (ICE), because she could not prove that she had been treated differently than her male coworkers who were allowed to keep their jobs and because she could not prove the termination was triggered by protected conduct.

Following a dispute between the plaintiff and another employee, and charges lodged against each other, MVM conducted an investigation. Through meetings with the parties involved as well as review of airport security video, MVM determined that the plaintiff had engaged in numerous security violations, including "abandoning her post" for two hours and "piggybacking," i.e., following another person through a secured door without both swiping their airport badge and entering their personal code on a keypad. The company terminated the plaintiff who subsequently brought suit under Title VII, in which the U.S. District Court judge entered an award for summary judgment for the defendant, MVM.

In the article published by Lawyers Weekly, Alicia Samolis, Chair of the Labor & Employment Group at Partridge Snow & Hahn, who was not involved in the case, noted that the plaintiff's misconduct which led to her termination was uncovered during an investigation, prompted by her complaint to her supervisor about a dispute with a male co-worker, who then accused the plaintiff of having directed foul language toward him during the dispute.

"What saved the employer here is that the court found an internal complaint about a co-worker was not protected conduct," she added. "I could see a court going the other way on that issue." The First Circuit found the internal complaint was not protected because it was not linked to statutorily prohibited discrimination, and rather was just a complaint about co-worker's workplace behavior which Plaintiff disapproved. In addition, Ms. Samolis noted that even if the complaint had been protected, the investigation stemmed not just by Plaintiff's complaint but also "because the co-worker complained about the plaintiff. If he hadn't complained, the employer might have a problem in terminating the plaintiff so soon after her complaint. That would deter reporting," Samolis said.

The First Circuit also considered whether the termination itself, occurring after the investigation and on the eve the company received the EEOC filing, was in retaliation for filing the charge.

"It seems so odd that ICE [U.S. Immigration and Customs Enforcement] ordered her removal the same day the plaintiff filed an EEOC complaint," Samolis said. "The timing is so coincidental that a jury could find that something fishy happened, such as a phone call from the employer to ICE."

However, the First Circuit Court upheld the dismissal of the retaliation claim as well, stating the Plaintiff had not brought forward any evidence that the ICE order of removal was prompted by the company's request. The decision was also likely influenced by the fact that there was evidence at the lower court level that ICE's removal decision was in the works prior to the EEO filing.

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

<https://www.psh.com/court-of-appeals-upholds-termination-of-airport-security-employee/>