



## **A SINGLE INFORMAL COMPLAINT TO A SUPERVISOR ALLEGING DISCRIMINATION CONSTITUTES “PROTECTED ACTIVITY” FOR PURPOSES OF RETALIATION CLAIMS**

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The United States Court of Appeals for the Seventh Circuit recently held that a single, informal complaint by an employee alleging that a supervisor was “being discriminatory” constituted “protected activity” for purposes of a retaliation claim. *Casna v. City of Loves Park, et al.* (7th Cir. 2009).

In this case, a police department clerk with a hearing impairment was assigned the task of filing a series of police reports. The employee’s supervisor placed the reports on her desk, and then returned a few minutes later and expressed disappointment that the employee had not yet completed the filing. The next day, the employee apologized to the supervisor for failing to complete the work, indicating that she had not heard the supervisor tell her that the filing needed to be done quickly. The supervisor expressed doubt over the employee’s inability to hear her instructions, noting that she had witnessed the employee listening to music at her desk in the past. The supervisor asked the employee to explain specifically what she could and could not hear, and unsatisfied with the employee’s response, asked “how can you work if you cannot hear?” The employee responded by asking “aren’t you being discriminatory?” The supervisor

abruptly ended the conversation, and the employee was terminated three days later for poor performance.

The employee subsequently sued the employer, alleging that she was terminated in retaliation for complaining of unlawful discrimination. Although a trial court initially ruled in favor of the employer on the grounds that the employee’s statement did not constitute protected activity because it was not a “formal” complaint of discrimination, the appellate court reversed that decision. In its ruling, the appellate court held that it was irrelevant whether the employee had made a formal complaint through the employer’s established complaint process, noting that even an informal complaint made to a supervisor constitutes protected activity for purposes of retaliation claims under the federal anti-discrimination laws.

This decision illustrates how little room for error employers have in interpreting comments or complaints by employees. Even informal or seemingly off the cuff statements mentioning discrimination must be taken seriously and evaluated to determine what, if any, action is warranted.



## CLIENT ALERT

Accordingly, supervisors should relay all such statements or comments to trained

human resource professionals or legal counsel.