

Eighth Circuit Holds that Denial of Religious Accommodations Does Not Give Rise to Title VII Anti-Retaliation Claim

By Sheri Stewart

In *Equal Employment Opportunity Commission v. North Memorial Health Care*, 908 F.3d 1098 (8th Cir. 2018), the Eighth Circuit Court of Appeals held that an employer's denial of a request for a religious accommodation and rescission of a conditional offer of employment did not violate Title VII's anti-retaliation provision. The Court indicated that such a denial should be brought as a disparate treatment claim.

Emily Sure-Ondara, a Seventh Day Adventist and registered nurse, attended an open house hiring event at North Memorial Health Care. She interviewed for a position with the Collaborative Acute Care for the Elderly (CACE) Unit. During the interview, Sure-Ondara learned that the applicable collective bargaining agreement for the CACE Unit required nurses to work eight-hour shifts every other weekend. Sure-Ondara did not disclose that, as a Seventh Day Adventist, she could not work from sundown on Friday to sundown on Saturday.

Instead, Sure-Ondara accepted a conditional offer of employment that stated: "You will be scheduled to work 8 Hour Night shifts, including every other weekend." *Id.* at 1099. When completing her pre-employment paperwork, Sure-Ondara disclosed for the first time that she needed "Friday nights off" to accommodate her religious beliefs. *Id.*

In response, North Memorial advised Sure-Ondara that the collective bargaining agreement required nurses to work every other weekend and that if she could not do so, North Memorial may need to offer the position to someone else. Sure-Ondara insisted she wanted the job and that she would "make it work," either by finding someone who would swap shifts or by "com[ing] in herself in an emergency or life-or-death situation." *Id.* at 1100.

North Memorial decided to rescind the conditional employment offer to Sure-Ondara for two reasons: First, it was

not realistic for Sure-Ondara to consistently find someone willing to work for her on Friday nights. Second, North Memorial was concerned that Sure-Ondara would not come to work unless she believed there was an emergency.

North Memorial advised Sure-Ondara that it could not grant her the requested accommodation and offered her the opportunity to work with North Memorial to identify other positions that may be available. Sure-Ondara insisted she could work without accommodation. North Memorial refused and reiterated that she could apply to work in another area. Sure-Ondara applied for other positions with North Memorial but was not hired.

Sure-Ondara filed a charge of discrimination with the EEOC, alleging in part that she was discriminated against because of her religious beliefs or in retaliation for requesting a religious accommodation in violation of Title VII. The EEOC filed an enforcement action claiming that North Memorial retaliated against Sure-Ondara for requesting a religious accommodation.

On North Memorial's motion for summary judgment, Senior United States District Judge David S. Doty held that the EEOC failed to establish a *prima facie* case of retaliation because "merely requesting a religious accommodation is not the same as opposing the allegedly unlawful denial of a religious accommodation." *Id.* at 1102. The Eighth Circuit affirmed, reasoning that "the fact that such a request [for a religious accommodation] is 'protected activity' does not mean it is always 'oppositional' activity." *Id.* at 1103. The court held that "when an employee or applicant requests a religious accommodation, and the request is denied by an employer...that accommodates reasonable requests that do not cause 'undue hardship,' there is no basis for an opposition-clause retaliation claim under § 2000e-3(a)." *Id.* Instead, the "exclusive Title VII remedy is an unlawful disparate treatment or disparate impact claim under § 2000e-2(a)(1)." *Id.* ■

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