



Employment Law Note

March 2019

Is it Harassment? Workplace Gossip Is No Joking Matter



By **Jillian Barron**, jbarron@sebrisbusto.com

Few workplaces are entirely free from gossip and rumors. Employers typically consider such chatter an annoying but inevitable part of social interactions among their employees, something to be ignored if possible. Supervisors sometimes join in the discussions of other employees' personal lives. They may even pass on rumors themselves. As a recent federal appeals court case demonstrates, however, gossip can perpetuate discriminatory stereotypes and, if left unchecked, lead to an unlawful hostile work environment. The problem is compounded when supervisors accept or contribute to a rumor instead of putting a halt to it.

The Case: Parker v. Reema Consulting Services (4th Cir. 2019)

Hired as a low-level clerk, Parker was promoted six times over the course of about 15 months, ultimately becoming Assistant Operations Manager of one of her employer's warehouses.¹ Soon after her promotion to the last position, Parker learned that Jennings, a former peer whom she now supervised, had initiated a false rumor that Parker had a sexual relationship with Pickett, a higher-ranking manager, to obtain the position.

Apparently with no investigation of the rumor's accuracy, Moppins, the most senior warehouse manager, participated in spreading it, and he treated Parker as the wrongdoer. For example, when Parker and Pickett both arrived a few minutes late to an all-staff meeting, Moppins let Pickett enter the room but slammed the door in Parker's face and

locked her out, then discussed the rumor during the meeting. When Parker sought to discuss the rumor with Moppins, he blamed her for bringing the situation to the workplace. He said he had had "great things" planned for her, but he could no longer recommend her for promotions or higher-level tasks and would not allow her to advance further because of the rumor. In a later meeting he told Parker he should have terminated her when she began "huffing and puffing about this BS rumor," and he began screaming at her. The rumor continued to spread, resulting in Parker being treated with resentment and disrespect by other employees.

Parker filed a sexual harassment complaint against Moppins and Jennings with Human Resources ("HR"). Jennings then submitted his own complaint with HR, alleging Parker was creating a hostile work environment for him. While Parker was instructed to have no contact with Jennings, however, supervisors allowed Jennings to spend time in Parker's work area, where he stared and smirked at her and spoke with and distracted her subordinates. When she raised the issue with HR and her supervisor, they didn't address it. Soon thereafter, Moppins met with Parker and issued her two warnings, one based on Jennings' complaint, the other on Parker's alleged poor management ability and insubordination to Moppins. In the same meeting, Moppins terminated Parker's employment.

Parker filed suit, asserting claims for sexual discrimination and retaliatory termination.² The district court acknowledged that virtually anyone would find it offensive to be the subject of a rumor that they engaged in a sexual relationship to obtain a promotion. Yet the court found

¹ The facts discussed in this case derive from Parker's court complaint, as the district court dismissed the case on the pleadings before any discovery was conducted.

² A third claim is not discussed here.

that such a rumor was based on the alleged *conduct*—sleeping with a supervisor—*not on Parker’s gender*. In addition, the court concluded the alleged harassment was not severe and pervasive because the rumor circulated for only a few weeks. The court therefore dismissed Parker’s discrimination claim, as well as her retaliation claim.

On appeal, the Fourth Circuit reversed, finding that Parker’s allegations were sufficient to make out a claim of harassment based on gender. The appeals court reasoned that the rumor about Parker relied on a deeply-rooted and persisting perception that women, but not men, use sex to achieve success. That discriminatory stereotype may then cause superiors and coworkers to treat women in the workplace differently than men. In this case, the gender-related nature of the rumor about Parker was further supported by the fact that: (1) men started and circulated the rumor; (2) after the rumor reached Moppins, he excluded Parker, but not Pickett, from a staff meeting; (3) after Jennings’ apparently retaliatory complaint against her, Parker was instructed to have no contact with him, whereas Jennings was not similarly instructed following Parker’s complaint against him; (4) Parker was disciplined for complaining about the rumor, while Jennings was not disciplined for filing a complaint of harassment against Parker; and (5) Parker, but not Pickett, was blamed for their alleged sexual relationship. The court thus concluded that Parker plausibly alleged she suffered harassment because she was a woman.

The Fourth Circuit also found that the alleged conduct was sufficiently severe and pervasive to support a harassment claim. The conduct was humiliating, led to disrespect from Parker’s subordinates, and interfered with her work. Moreover, not only was the rumor and its perpetuation all-consuming from the time it began up to the time Parker

was fired, but much of the alleged misconduct relating to the gossip came from Moppins, Parker’s superior, making it especially threatening. And ultimately the rumor caused Parker’s termination. In sum, the court concluded Parker’s hostile-work-environment discrimination claim based on sex could move forward.

Takeaway

Parker’s case is an example of how unchecked workplace gossip and rumors can both undermine the accurate assessment of employee performance and create the risk of litigation. Most workplace gossip may not be so derogatory and laced with sexual accusations. Yet it is not uncommon for employees to discuss or joke about coworkers’ or supervisors’ personal characteristics and activities—their looks, habits, mannerisms, social relationships, romantic and sexual entanglements, and family lives. Such discussions can incorporate discriminatory stereotypes about the individuals involved. Supervisors should keep an ear out for conversations that include discriminatory or other inappropriate assertions or innuendo and stop them before they could reasonably be considered harassing. A supervisor who joins in the conversations, shares the rumors, or makes employment decisions based on them without adequate investigation may well subject him or herself, as well as the employer, to potential liability.

For more information about this month’s Employment Law Note
contact us at 425-454-4233

