



HRMA-PRINCETON LEGISLATIVE/LEGAL UPDATE

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Yeager v. Covenant Security Svcs., 2017 WL 2560340 (D.N.J. 2017)

Facts. Covenant provides security and protection services to clients at facilities across the country. Plaintiff was hired by Covenant as a security officer in the summer of 2011. On August 1, 2011, Plaintiff signed a Handbook Acknowledgement Form, acknowledging that he had received Covenant's Employee Handbook and that he would become familiar with the policies set forth in the Handbook. On October 15, 2011, Plaintiff was promoted to the position of site manager. On November 22, 2011, Plaintiff underwent supervisory training, which included training regarding Covenant's sexual harassment policies and procedures.

Covenant's Employee Handbook expressly prohibits harassment of any kind, including sexual harassment. Specifically, the Employee Handbook provides that “[a]ny employee who believes that he or she has been a victim of some form of sexual or other harassment, or other inappropriate conduct or behavior, should report the incident immediately to his or her supervisor, the Human Resources Manager or any member of senior management with whom the individual feels comfortable.” It further states: “If reported to a supervisor, the supervisor fills out a ‘Preliminary Complaint Form’, having the employee briefly describe what incident has occurred. The supervisor does not investigate the complaint—it must be immediately forwarded to the Human Resources Manager.”

Covenant also promulgates a “Harassment Free Workplace” Policy, which applies to all Covenant employees. The Policy provides, in relevant part: “All supervisors and other members of management are held accountable for the effective administration of this Policy.... If a supervisor or other member of management is advised of any alleged violation of this Policy, ... he/she must immediately report the matter to the Human Resources Department or to a senior member of management so that an appropriate investigation can be initiated. Failure to do so will result in corrective action up to and including termination.” The Policy also directs supervisors to “report harassment claims to the HR Department for investigation as soon as possible, and in most instances, no later than 24-hours of the occurrence.”

During the relevant time period, Plaintiff supervised Meegan Wadleigh, a security officer. On *May 8, 2013, May 9, 2013, May 31, 2013, and June 14, 2013*, Wadleigh reported to Plaintiff that she had been sexually harassed by another Covenant employee, Scott Tucker. Plaintiff documented and signed Wadleigh's four (4) complaints, which also included a description of the incident by Wadleigh. Plaintiff did not immediately send the reports to Covenant's Human Resources Department, as required by Covenant's reporting policies, and instead noted: “no witness need proof.”

Wadleigh did not report Tucker's alleged sexual harassment to anyone at Covenant, except Plaintiff, during her employment with Covenant. Plaintiff admits that he did not notify anyone at Covenant of Wadleigh's sexual harassment complaints prior to June 20, 2013 (1.5 months after first complaint). Plaintiff testified that he did not immediately report Wadleigh's complaints because, in his experience, Covenant did not take sexual harassment complaints seriously unless there was corroborative evidence.

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On or about June 25, 2013, Ben Goehring, an Operation Specialist at Covenant, called Plaintiff to inform him that Wadleigh was required to report to a meeting on June 27, 2013. During the call, Plaintiff told Goehring that Wadleigh had sexual complaints. Plaintiff told Wadleigh to bring her written sexual harassment complaints with her to the meeting. Wadleigh, however, did not inform Covenant of her sexual harassment complaints during the June 27, 2013 meeting. **During the meeting, Covenant terminated Wadleigh's employment, purportedly due to poor performance and behavioral issues.** Brown (VP HR), Dennis, Goehring, and Dominic Ferrara, Covenant's Senior Vice-President of Operations, each testified that they were not aware of Wadleigh's sexual harassment complaints at the time of her termination on June 27, 2013.

On July 1, 2013, several days after Wadleigh's termination, Plaintiff sent an email to Dennis, which read, in relevant part: "I documented that Ms. Wadleigh had several complaints, sexual and other, she wanted to report to me however I instructed her to make her complaints in Philadelphia (HR) during her meeting with you and Ben, since I was not involved with investigation. See attached." To the email, he attached a Corrective Action Form, dated June 27, 2013, which stated: "Ms. Wadleigh asked to report her own complaints of harassment both sexual and other. She was instructed by me, [due] to the fact she was meeting with Covenant SOS Goehring + HR Dennis due to pending matter, on this date at 12pm. I advised I would document her request."

On July 10, 2013, Wadleigh sent a letter to Brown, in which she claimed that Tucker had sexually harassed her during her employment with Covenant and that she had "made Dave Yeager aware of [the] complaints." Brown responded to Wadleigh on July 12, 2013, in relevant part: "Covenant has a zero tolerance policy for all forms of harassment, sexual or otherwise. Covenant takes these types of allegations very seriously.... Had you informed the company of your allegations regarding Mr. Scott Tucker earlier, there would have been a prompt and thorough investigation with the necessary action taken, if warranted. Because you chose not to do so, the company could take no action. In this instance, Mr. Tucker's employment with Covenant had ended prior to the receipt of your complaint."

Covenant, however, did not institute any investigation into the substance of Wadleigh's letter upon receiving it. Brown testified that Covenant did not believe an investigation was necessary at the time given that both Wadleigh and Tucker had previously been terminated.

On October 3, 2013, Wadleigh's attorney, David F. McComb, sent Brown a letter, which specifically described the four instances of sexual harassment that Wadleigh reported to Yeager and the dates on which the alleged harassment occurred. The letter also stated that "Ms. Wadleigh immediately reported each such occurrence to her supervisor, David Yeager. Although Mr. Yeager documented each complaint, he informed Ms. Wadleigh that she needed more evidence because, in Mr. Yeager's experience, Covenant did not take these types of complaints seriously." McComb further noted that it was his "understanding that prior to the [June 27, 2013] meeting, Mr. Yeager sent Mr. Goehring an email notifying him that Ms. Wadleigh had complained about incidents of workplace sexual harassment and asking Mr. Goehring whether he wanted to review Mr. Yeager's notes on the complaints. We believe that Mr. Yeager received no response to his inquiry."

On December 11, 2013, Wadleigh filed a complaint against Covenant for NJLAD retaliation and wrongful termination (the "Wadleigh Complaint"). In her Complaint, Wadleigh alleged that she had been sexually harassed by Tucker on at least four occasions. She described the four instances in detail and alleged that "[she] immediately reported each such occurrence of harassment to her supervisor, David Yeager. Although Mr. Yeager documented each complaint, he informed Plaintiff that she needed more evidence because, in Mr. Yeager's experience, Covenant did not take these types of complaints seriously." Brown testified that Covenant viewed the allegations in the Wadleigh Complaint as "strictly allegations."

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Covenant did not investigate Plaintiff following receipt of the 10/3/13 letter and 12/11/13 Complaint.

On August 15, 2014, in connection with Wadleigh's lawsuit, the parties appeared for a Court-ordered mediation (the "Wadleigh Mediation"). During the Wadleigh Mediation, but outside the presence of Covenant's representatives, Plaintiff spoke with the mediator over the phone. He informed the mediator that Wadleigh had reported complaints about Tucker's sexual harassment on multiple dates during her employment with Covenant and that Plaintiff had documented each of the complaints. The mediator then conveyed this information to Covenant's representatives. After being informed by the mediator of Plaintiff's comments, Ferrara discussed the matter with Brown and Gregory Iannuzzi, Covenant's President, as he was concerned that Plaintiff had possibly violated Covenant's sexual harassment reporting policies. Covenant directed its attorneys to meet with Plaintiff to discuss the matter further.

On October 2, 2014, two of Defendant's attorneys met with Plaintiff. Plaintiff confirmed that Wadleigh had reported sexual harassment by Tucker to him on four occasions during her employment with Covenant. Plaintiff testified that, during this meeting, *Covenant's attorneys asked him if had "talk[ed] to anybody about this case."* Then, *Plaintiff testified, "[o]ne of [Covenant's] attorneys, ..., red-headed kid, blows a gasket. Tells me you don't f---ing talk to anybody about this case. If anybody contacts you about this case, tell them to go f---themselves."*

Thereafter, on October 31, 2014, Covenant terminated Plaintiff for "violation of Covenant's policy and procedures [and] failure to report sexual harassment."

Plaintiff claims that he was wrongfully terminated by Covenant due to his participation in the Wadleigh Mediation and his willingness to assist Wadleigh in her litigation against Covenant.

Legal Analysis

Under NJLAD, it is unlawful "[f]or any person to take reprisals against any person because that person has opposed any practices or acts forbidden under this act or because that person has filed a complaint, testified or assisted in any proceeding under this act or to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this act." N.J.S.A. § 10:5-12(d).

Timing between Mediation and termination – unduly suggestive?

Connection between Mediation and termination? It was precisely Plaintiff's participation in the Wadleigh Mediation that triggered the investigation into Plaintiff's conduct which led to his termination. And there is evidence in the record from which a jury could find that Defendant was on notice of the fact that Wadleigh had reported sexual harassment to Plaintiff on multiple occasions prior to her termination, and that Plaintiff had documented the complaints, but not reported them to Human Resources, and yet Covenant did not investigate Plaintiff's conduct, nor did it discipline Plaintiff in any way.

Take-aways??

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