



# Second Circuit Rules that Football Managers are “Employees” under Title VII

June 24, 2011

*Summa v. Hofstra University, et al.*, No. CV-08-0361, (April 7, 2011)

This Title VII employment discrimination case dealt with circumstances surrounding the harassment of an employee/student by another student. The Plaintiff, Lauren Summa (“Summa”), was a former undergraduate and graduate student at Hofstra University. Summa was hired as the football manager for the 2006-2007 football season. Over the course of her employment, the football players allegedly harassed Summa on multiple occasions. Summa commenced a lawsuit claiming (1) discrimination under Title VII and NYSHRL, (2) discrimination under Title IX, and (3) retaliation.

## Discrimination Claims

### Title VII and NYSHRL Discrimination Claims

Since Summa was a graduate student at the time of the incidents, the Court noted that often graduate students hold “a unique dual role ... as potentially both students and employees.” The Second Circuit applied a two-part test to establish employment for Title VII purposes. First, a “plaintiff must establish that [she/he] was hired by a putative employer,” which can be satisfied by showing a claimant “received remuneration in some form.” Second, Plaintiff must establish that an “employment relationship” existed, which takes into account multiple factors.

Because Summa was paid for her services and an employment relationship existed, the Court concluded that Summa could utilize Title VII to pursue a remedy for her discrimination claims. However, after (1) removing all “gender neutral incidents”; (2) considering the “severity and pervasiveness” of Summa’s remaining claims under the “totality of the circumstances”; and (3) taking into account that the alleged acts and comments were from players and not co-workers, the Court determined that none of Summa’s claims established a Title VII cause of action

The Court went on to note the difficulties that would arise once Summa tried to impute the conduct of the players to her employer, Hofstra, particularly in light of remedial actions taken by Hofstra employees once they were made aware of the alleged acts.

## Title IX Discrimination claims

The Court next addressed Summa's Title IX claims. The court concluded that Hofstra University would have been "deemed deliberately indifferent" to an act of student-on-student harassment only if the university's "response to the harassment or lack thereof [was] not clearly reasonable," or if "remedial action only follows after a lengthy and unjustified delay." The Court concluded, however, that the university employees responded reasonably and promptly every time they were made aware of plaintiff's claims of harassment. Therefore, Summa's Title IX discrimination claim was unsuccessful.

## Retaliation Claims

Finally, the Court addressed Summa's retaliation claims. Summa's complaint addressed three separate acts of retaliation taken by the University: 1) denial from acting as the football team's manager during spring ball in 2007, 2) denial from the Graduate Assistantship position in summer 2007, and 3) the termination of her privilege of student employment in August 2008. The Court determined that Summa may have satisfied her burden of establishing retaliation when Hofstra offered her a Graduate Assistantship position, which was later rescinded. However, the Court held that Hofstra provided a legitimate, non-discriminatory reason for its decision: namely: (a) Summa submitted, and was paid for, duplicative hours during her employment and (b) Hofstra found misstatements on Summa's resume concerning her academic program. Thus, because Hofstra met its burden of proving a legitimate, nondiscriminatory reason for their action and Summa failed to provide evidence to show that Hofstra's reasons were merely a pretext for retaliation.

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