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Sixth Circuit Sends Ohio State Graduate Student's Employment Status Case Under Title VII to a Jury Trial

Labor Relations Update on **September 4, 2024**

On August 28, 2024, the Sixth Circuit in *Huang v. Ohio State Univ.,* 6th Cir., No. 23-03469 (Aug. 28, 2024) –—in a case with broader implications for the employment status of graduate students—reversed the Southern District of Ohio's summary judgment ruling that dismissed a graduate student Plaintiff's Title VII *quid pro quo* sexual harassment and retaliation claims against Ohio State and Plaintiff's academic advisor. The parties will now go to trial, absent settlement, on whether the graduate student was an employee under Title VII of the Civil Rights Act at the time of her Graduate Fellow appointment, when her academic advisor allegedly engaged in sexual harassment.

Background

In 2018, a Plaintiff graduate student at The Ohio State University ("Ohio State"), alleged that her academic advisor sexually harassed and assaulted her while she pursued her PhD.

Upon matriculation to Ohio State, Plaintiff had accepted two overlapping offers: (1) enrollment at Ohio State as a Graduate Research Associate ("GRA") in the engineering department's PhD program; and (2) a Graduate Fellow position that would fund her tuition and provide her with a stipend and extra bonus for the first two years of her studies.

Under the GRA offer, it is undisputed that Plaintiff would have been classified by Ohio State as an "employee" under the common-law agency doctrine for purposes of Title VII liability. As outlined here, the common law agency doctrine is the standard applied to employment status under the National Labor Relations Act ("NLRA"), which requires the payment of compensation and employer control over the services provided by the individual. However, under the two-year Graduate Fellow position, Ohio State classified Plaintiff as a "student" as she was not intended to be performing work or services under the control of Ohio State.

The alleged sexual harassment occurred during Plaintiff's two-year Graduate Fellow position, which created an issue regarding whether she should be considered an employee under Title VII at the time of the alleged harassment.

District Court Summary Judgment

On November 4, 2022, the District Court granted summary judgment in favor of Ohio State and Plaintiff's advisor on both of the Title VII claims. Ohio State prevailed on the retaliation claim because Plaintiff's first formal complaint came in December 2017, after she was removed from the PhD program. Because "all the alleged adverse actions" occurred before Plaintiff's "first statutorily protected activity," the Court granted summary judgment in favor of Ohio State. Employment status was not an issue with regard to the retaliation claim because the adverse action occurred after Plaintiff had become a GRA and thus an Ohio State employee.

For the *quid pro quo* claim, the Court's decision turned on its view of when Plaintiff was considered an "employee" for Title VII purposes. The parties agreed that Plaintiff was an employee in August 2017, when Ohio State changed her title from Graduate Fellow to GRA. However, before that date, the Court concluded that she was solely a student, as any services Plaintiff provided were considered "in pursuit of her own educational goals." The Court reasoned that Plaintiff was not *required* to perform services for Ohio State, and while the University set her academic standards, Plaintiff remained in "complete control" of (i) how to conduct her academic studies; (ii) the amount of time she devoted to them; and (iii) whether she read an assignment or attended a lecture or meeting. Because Plaintiff was only a student at the time of the alleged harassment, the Court held that she could not have suffered an "adverse employment action" as required for a Title VII claim.

The case went to trial on a 42 U.S.C. Section 1983 due process claim, on the grounds that Plaintiff's advisor had improperly touched Plaintiff. The jury returned a verdict for the advisor after the four-day trial, but after trial, Plaintiff timely appealed the grant of summary judgment to Ohio State on the Title VII claims, leading to the Sixth Circuit's review.

Sixth Circuit Decision

On both Title VII claims, the Sixth Circuit reversed the District Court, remanding the sexual harassment and retaliation claims to trial in light of its finding that Plaintiff was an Employee as a matter of law under Title VII as a Graduate Fellow.

Regarding the *quid quo pro* claim, the Sixth Circuit engaged in a lengthy analysis on employee status, finding Plaintiff to be a common-law employee during her Graduate

Fellow appointment. The Court prefaced its analysis by noting that Ohio State's own characterization of the relationship was irrelevant to its finding. Thus, even though Plaintiff's admission letter "outlined a purely academic relationship" during the Graduate Fellow appointment, the Sixth Circuit engaged in a more "holistic[]" evaluation of Plaintiff's purported employment relationship with Ohio State. The Court also stated that the potential overlap between academic and employment "work" does not prevent graduate students from being employees under Title VII, and further criticized the District Court for failing to recognize that Plaintiff's "research and other work…could be simultaneously an academic and employment activity."

On the merits of the employment status issue, the Sixth Circuit concluded that Ohio State derived "significant economic benefit[]" from Plaintiff's research. And while Plaintiff's advisor guided her to obtain her PhD degree, the bulk of her relationship with her advisor was "focused on…research and meetings" related to Ohio State's "regular business." Regarding the element of control, the Court concluded that Ohio State—through Plaintiff's advisor—dictated Plaintiff's research based on the University's needs and set the times and location of her research, which was viewed as "the type of control" that made Plaintiff an employee. Plaintiff also received a stipend and a discretionary bonus, which was tied to her research—not just her enrollment in the PhD program. The Court found these fact indicative of a common-law employment relationship.

Takeaways

This case has implications for the National Labor Relations Board ("NLRB" or the "Board") as well as other agencies and courts that are currently faced with disputes regarding the employment status of graduate students. In its *Columbia* decision, the Board held that work in pursuit of academic progress is insufficient to confer employee status to graduate students. Although not binding on the NLRB, the Sixth Circuit's decision in Huang could be cited as persuasive evidence in proceedings before the NLRB, Regional Directors, or Circuit Courts on appeal, regarding the manner in which judges or agencies may scrutinize the duties performed by graduate students to determine whether services intended to be academic in nature resemble a common-law employment relationship. The Board's *Columbia* decision has been cited recently in *MIT* and *Brown*, finding that graduate students who receive funding to make academic progress are not employees under the NLRA.

We will continue to monitor developments in the area of graduate student employment status.

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