

Former Professor Wins Retaliation Suit

A history professor at Madison Area Technical College, Michael Dubin, complained to his dean in 2006 about what he felt were demeaning comments made about his Jewish faith by two colleagues. According to evidence at trial, the dean reacted negatively to Dubin's complaint and commented that he would not likely remain at the College. Dubin's three year probationary teaching contract was not renewed in 2009, terminating his employment. He was the only one of 18 probationary instructors at the College whose contract was not renewed. He subsequently sued the College alleging that his contract was not renewed because he was Jewish (a discrimination claim) and because he had complained about religious harassment (a retaliation claim).

At trial, the College claimed that the dean's decision not to continue Dubin's employment was based on his performance as an instructor and student complaints. The jury did not accept that explanation, however, and found the College guilty of retaliation, awarding Dubin \$1.1 million in damages for emotional distress and harm to his career. The religious discrimination claim had earlier been dismissed by the trial judge. The judge will now determine whether to order the College to reinstate Dubin to his former teaching position and to pay him the wages and benefits he lost since 2009. He also intends to seek an order requiring the College to pay his attorney's fees. The College is considering an appeal.

This is a textbook example of what often occurs in lawsuits that include both discrimination and retaliation claims. While the defendant College was found not to have discriminated against the plaintiff, it was found guilty of having taken adverse action against him because he raised a discrimination complaint. This explains why most discrimination/harassment lawsuits also include a retaliation claim. Even if discrimination cannot be established, an employee may still win by showing his complaint about discrimination triggered some adverse response from the employer.