

## UAB Defends Discrimination Lawsuit

UAB recently obtained a favorable ruling from the Eleventh Circuit Court of Appeals in a discrimination suit brought by a former coach. *Nichols v. Board of Trustees of The University of Alabama*, No. 06-14662 (11th Cir. Oct. 17, 2007). Jonath Nichols, a black assistant women's basketball coach, sued UAB under Title VII of the Civil Rights Act of 1964 for allegedly discriminating against him based on race and gender. More specifically, he alleged discriminatory treatment with respect to his salary, his suspension after sexual harassment charges were brought against him, his unsuccessful application for the head coaching position at UAB when it became vacant, the termination of his employment, and the retaliation he experienced in the form of several adverse employment actions taken by UAB. Nichols' claims were all dismissed by the trial court after UAB filed a summary judgment motion, and he appealed to the Eleventh Circuit.

The appellate court's decision usefully reviews the legal principles that apply in this somewhat complex area of employment law. Nichols' first, disparate pay claim involved the assertion that he was paid less than a white female who served as associate coach of the team. The court noted that, though it was true a substantial difference in pay existed between the two individuals, they were not "similarly situated" in terms of their duties and other factors, as required to establish a case of pay discrimination. The other coach was the recruiting coordinator, an important function that Nichols did not have, and she had been a UAB coach for seven years longer than Nichols.

Nichols' second claim was for disparate discipline. His support for this claim involved information about another male, African-American assistant coach who faced similar false harassment charges and who was also disciplined. The court noted, however, that Nichols had to show UAB treated him differently than a person outside of his protected race and gender class. Alleged unequal discipline of another coach of the same sex and race was insufficient as evidence of race or gender discrimination. His next claim included the assertion that his contract was not renewed and he was therefore subjected to disparate discharge. The court again concluded that Nichols failed to establish the basic elements of a discrimination claim because "he does not demonstrate that any similarly situated employees were treated more favorably than the Plaintiff." After the new coach was hired, no assistant coaches serving under the previous head coach were retained. Moreover, Nichols did not actually apply for a position after his contract expired.

With regard to Nichols' disparate hiring claim, he was successful in establishing the threshold elements of a valid claim. However, UAB responded with legitimate, non-discriminatory reasons for hiring another candidate as head coach: the hired individual had ten years experience as assistant coach at a major Division I university, including several years during which she served as recruiting coordinator, while Nichols' experience included only three years as assistant coach at UAB and a number of years as assistant coach at a community college. When an employer comes forward with non-discriminatory reasons for its decision, a plaintiff must offer some evidence that the reasons are "pretextual" in order to maintain a claim. This Nichols failed to do.

The final claim related to retaliation. Nichols alleged that he experienced several adverse employment actions (UAB's removal of coaching duties from his job, failure to hire him as head coach, and non-renewal of his contract) after he complained of discriminatory treatment to a UAB official and then to the Equal Employment Opportunity Commission. The court reiterated the rule that a retaliation claim requires a causal link between the employee's protected activity (*i.e.*, his complaints) and the alleged retaliation by the employer. In terms of the latter two alleged retaliatory actions, the court observed that approximately three months elapsed between his complaints and the appointment of a new head coach, and that the non-renewal of his contract occurred approximately five months after the complaints. These periods of time were, in the court's opinion, "too great to support a causal link." With regard to the change in coaching duties, the court noted that, assuming the necessary causal connection was established, UAB met its burden of producing a legitimate reason for its decisions. Simply stated, due to the sexual harassment complaints made against Nichols and his failure to comply with his supervisor's instructions, the supervisor was not satisfied with Nichols' job performance.

A university cannot prevent a disgruntled employee from filing suit, and Title VII of the Civil Rights Act provides a potential basis for employees who fall within one of the several protected classes under the statute to challenge adverse employer actions. The best defense for a university-employer continues to be the existence of non-discriminatory reasons, clearly supported by the facts, for any negative employment decisions. "Non-discriminatory" in this context encompasses, of course, the absence of overt discriminatory motives. It goes beyond this, however, and also requires employer consistency in the way employees who are members of a protected class under Title VII are treated in comparison with employees who do not fall within those classes. Disciplining a member of a minority racial or ethnic group for conduct that is excused or tolerated in a non-minority employee, for example, is almost guaranteed to give the minority employee a jury trial on the ensuing claim. And any unfavorable employer actions taken after an employee has presented a discrimination complaint, internally or to an external administrative agency, should always be carefully scrutinized before being implemented to insure that there is no appearance of a retaliatory motivation. As long as the employer can demonstrate the presence of valid job-related grounds for such actions, it should be able to successfully deflect any retaliation claim the employee seeks to pursue in court.