

## 2nd Circ. Says Title VII Claim Can Be Based On Firing Notice - Law360

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Law360, New York (August 10, 2017, 6:24 PM EDT) -- The Second Circuit on Thursday revived a woman's suit claiming she was given a pink slip by the Jewish congregation where she worked after it discovered she was pregnant at her wedding, finding a Title VII cause of action can be based on a termination notice even if it was rescinded before taking effect.

A three-judge panel vacated a lower court's ruling that tossed Alana Shultz's claims for discriminatory termination in violation of Title VII of the Civil Rights Act of 1964 and interference with her exercise of her Family and Medical Leave Act rights. The suit is against Congregation Shearith Israel of the City of New York, the Spanish and Portuguese Synagogue.

The panel agreed with her principal claim that a termination notice she received after she returned to work following her honeymoon visibly pregnant was an adverse employment action itself, despite the fact it was later revoked.

"Here, the congregation did not attempt to rescind the termination for two weeks," the panel wrote. "Shultz thus had ample time to experience the dislocation of losing her employment at a particularly vulnerable time, undertake the effort of retaining counsel, and inform the congregation that she was going to file suit."

Additionally, the panel found that the district court shouldn't have dismissed her FMLA claim, which the lower court did on the ground that her employment hadn't been effectively terminated, and remanded back to the district court its decision to not to exercise supplemental jurisdiction over Shultz's New York state and city claims because it tossed her federal claims.

She had made city and state law claims that mirrored her Title VII allegations, and had also alleged that she was defamed under state law, the panel wrote.

The panel did, however, find that the lower court properly dismissed Shultz's claim that she was retaliated against after she retained a lawyer following her firing notice, finding that the district court correctly found she hadn't pled that the congregation acted in retaliation for her threat of legal action.

Shultz, who was pregnant at the time of her wedding in June 2015, had worked as the congregation's program director for 11 years, the decision said. She had told the congregation's executive director she was pregnant before departing on her honeymoon, according to the decision.

Shultz came back to work on July 20, 2015, and the next day she was informed that her employment would be terminated effective Aug. 14, 2015, because of restructuring, the panel wrote. After Shultz's lawyer told the congregation's attorneys her client retained counsel to pursue claims relating to the termination, Shultz was informed that the congregation had reinstated her position, according to court documents.

Shultz did not return to work after the original date she was told her termination would be effective, the panel said, and did not deposit paychecks the congregation had continued to issue her.

Jeanne Christensen, an attorney for Shultz, said in a statement on Thursday that women in the workplace shouldn't have to fear they might get fired because they get pregnant.

“Shearith Israel holds itself out as a pre-eminent and historic religious institution, yet its conduct surrounding Ms. Shultz is appalling,” Christensen said. “As held by the Second Circuit, the congregation cannot flout federal anti-discrimination laws. We look forward to moving ahead to discovery and holding Shearith Israel accountable for the gross injustice committed against our client.”

Sarir Z. Silver, an attorney for Congregation Shearith Israel, said in a statement that she is exploring her legal options with her clients in order to determine the best course of action, and that seeking further judicial review of the decision “is still on the table.”

U.S. Circuit Judges José A. Cabranes and Gerard E. Lynch sat on the panel for the Second Circuit. U.S. District Judge Kiyo A. Matsumoto of the Eastern District of New York sat on the panel by designation.

Shultz is represented by Jeanne Christensen, Bryan Arbeit and Elizabeth Chen of [Wigdor LLP](#).

Congregation Shearith Israel is represented by Vincent Avery and Sarir Z. Silver.

The case is Shultz v. Congregation Shearith Israel, case number [16-3140](#), in the U.S. Court of Appeals for the Second Circuit.