

Court allows lawsuit against the University of Maryland Medical Center to continue (in part) under both Title VII and Title IX.

Carly Goldstein, the plaintiff in this case, was a researcher who reported to and received assignments from surgeons with dual appointments at the University of Maryland Medical Center (“the University”) and the Baltimore VA Medical Center (“VA”). Ms. Goldstein alleged that Dr. Crawford, one of the surgeons who supervised her, had sexually harassed and retaliated against her over the course of two years, which continued despite her repeated requests for him to stop. She also alleged that she reported his behavior to two other surgeons in the department, neither of whom responded appropriately nor reported the behavior to the University’s Title IX office. Ms. Goldstein filed a lawsuit against the University alleging that it had violated Title IX, Title VII, and the Maryland Fair Employment Practices Act (FEPA) by permitting sexual discrimination and sexual harassment to occur and by retaliating against her for reporting such treatment, all of which created a hostile work environment.

On September 17, 2019, a federal district court issued a memorandum that permitted most of Ms. Goldstein’s allegations against the University to continue. Because this decision was made in response to the University’s Motion to Dismiss, the parties had not yet engaged in discovery. Accordingly, the court based its decision on the facts presented in the plaintiff’s complaint.

Factual background and allegations

Ms. Goldstein began working for the University of Maryland Medical Center as a research intern in 2012. In 2014, she was hired as a research assistant by Dr. Lal, who held dual appointments at the University and at the VA. Ms. Goldstein’s position was funded by a third organization called the Baltimore Research and Education Foundation (“BREF”), although she allegedly performed the same as she would have done if she had been formally hired by the University. In her role, Ms. Goldstein was supervised by and received work assignments from a University employee and three vascular surgeons who held dual appointments at the University and VA. She split her time working for both entities (approximately 75% of her time was devoted to University-related research and administrative tasks and 25% was devoted to VA-related work).

Ms. Goldstein alleged that between 2014 and October 2016, one of her supervisors, Dr. Crawford, had sexually harassed her on numerous occasions. He sent her frequent unwanted text messages, including one in which he said he was going to kidnap her, adopt her, marry her, clone her, and eat her. On one occasion in the summer of 2015, Dr. Crawford tried to kiss her and reach his hand down her shirt. On another occasion, he put his arm around her, touched her thigh, and kissed her against her will. Both alleged incidents occurred outside of work. Ms. Goldstein also alleged that Dr. Crawford engaged in quid pro quo harassment, refusing to complete certain work tasks (e.g., failing to order CT scans and blood work that she needed for her studies) unless she agreed to socialize with him.

Ms. Goldstein reported Dr. Crawford’s behavior on multiple occasions, beginning in the summer of 2015, to Dr. Toursavakohi, who said he would “handle it” and would ensure that Dr. Crawford “will not do this again.” Dr. Crawford was ordered to apologize to Ms. Goldstein, but

instead he scolded her for reporting his behavior and for “overreacting.” Dr. Crawford also demanded that she rescind her sexual harassment complaints.

In January 2016, Ms. Goldstein began complaining about Dr. Crawford’s behavior to Dr. Sarkar, who served as the University’s Chief of Vascular Surgery and Dr. Crawford’s supervisor. In response, Dr. Sarkar instructed Ms. Goldstein to copy him on all emails with study sponsors whenever Dr. Crawford failed to fulfill his responsibilities. When she began to do this, Dr. Crawford allegedly “screamed” at Ms. Goldstein for copying Dr. Sarkar.

Neither Dr. Toursavatkohi nor Dr. Sarkar reported any of Ms. Goldstein’s complaints to the Title IX Coordinator.

In August 2016, Dr. Sarkar informed Ms. Goldstein that her position would be reduced to part-time because Dr. Lal’s funding was ending. Ms. Goldstein perceived this action to be retaliation for complaining about Dr. Crawford.

In October 2016, Ms. Goldstein reported Dr. Crawford’s misconduct to the University Title IX office. The Title IX Coordinator immediately ordered Dr. Crawford to have no contact with Ms. Goldstein. While the no-contact order was in effect, Ms. Goldstein was prohibited from discussing it with any third parties. She alleged that this directive was a tangible adverse employment action because it interfered with her communications with study sponsors and prevented her from getting recommendation letters that she needed for graduate school.

Approximately one week later, Ms. Goldstein’s attorney sent a demand letter to the University’s Title IX Coordinator, and the Title IX office initiated an investigation into Ms. Goldstein’s allegations.

In February 2017, Ms. Goldstein filed discrimination charges with the EEOC against the University. In June 2017, the Title IX office completed its investigation and found, by a preponderance of the evidence, that the hospital’s Title IX policy had not been violated by Dr. Crawford. The Title IX office determined that Dr. Crawford had not subjected Ms. Goldstein to unwelcome sexual harassment. Rather, the two had engaged in a consensual “personal relationship that extended beyond the workplace and involved Dr. Crawford exercising poor judgment for someone in his position.” The EEOC issued a right to sue notice in July 2017.

On August 2, 2018, Ms. Goldstein filed a lawsuit in federal district court alleging that the University had violated Title IX, Title VII, and the Maryland Fair Employment Practices Act (FEPA) by permitting sexual discrimination and sexual harassment to occur and by retaliating against her.

The University is considered a joint employer

The University argued that Ms. Goldstein’s complaint should be dismissed because it was not her employer during the alleged period of discrimination, harassment, and retaliation. The University alleged that BREF was Ms. Goldstein’s employer, and when she was completing

assignments for Dr. Crawford and Dr. Lal, they were conducting work pursuant to their VA appointments. The court rejected the University's argument. It applied the Fourth Circuit's hybrid test, an analysis of nine factors that determines whether an entity qualifies as a joint employer. Based on the hybrid test, the court found that the University was functioning as Ms. Goldstein's joint employer during the period relevant to her complaint.

Ms. Goldstein's Title VII hostile work environment claims were permitted to proceed

The University argued that Ms. Goldstein failed to exhaust her administrative remedies because several of her claims were not included in the EEOC charge. However, it is well established principle in Title VII caselaw that claims that are "reasonably related to the original complaint, and those developed by reasonable investigation of the original complaint may be maintained in a subsequent Title VII suit." *Stewart v. Iancu*, 912 F.3d 693, 705 (4th Cir. 2019) citing *Chacko*, 429 F.3d at 506).

Accordingly, the court denied the University's motion to dismiss some of the claims but permitted it as to others. For example, the court dismissed Ms. Goldstein's claim against a postdoctoral scholar for harassment that allegedly occurred in October 2015, which she had not raised in her EEOC charge.

Ms. Goldstein's Title IX claims were permitted to proceed

The Supreme Court ruled in *Gebster v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 247 (1998), that in order for an educational institution to be liable for damages under Title IX, it must have "actual knowledge" of discrimination and "fail to adequately respond." Actual knowledge is imputed to the educational institution if "an official who at a minimum has authority to address the alleged discrimination ... fails adequately to respond." The University argued that because its Title IX policy designates all administrators and faculty as "responsible employees," who are explicitly prohibited from investigating or resolving complaints without the involvement of the Title IX Coordinator, the University did not have actual knowledge of the alleged sexual harassment until Ms. Goldstein submitted a demand letter to the Title IX office. The court rejected this argument, finding that Dr. Sankar and/or Dr. Toursavadkahi "may have had the requisite authority to address the alleged discrimination and institute at least some corrective measures." The court also found that Ms. Goldstein sufficiently pled that the individuals to whom she reported the sexual harassment "fail[ed] to adequately respond or display[ed] deliberate indifference" by not reporting her complaints to the Title IX office and by failing to institute any substantive corrective measures. *Jennings v. Univ. of N.C.*, 482 F.3d 686, 700-01 (4th Cir. 2007).

The court granted the University's motion to dismiss as to Ms. Goldstein's claim that the Title IX office acted with deliberate indifference. The court found that although Ms. Goldstein disagreed with the outcome of the Title IX office's investigation, the Title IX office had responded appropriately when it issued a no-contact order and conducted a thorough investigation into her allegations.

Because Ms. Goldstein sufficiently alleged that she had engaged in protected activity under Title IX (i.e., reported the alleged harassment and discrimination to two university officials) and that she suffered an adverse action as a result of her protected activity (through Dr. Sarkar and Dr. Toursavadkahi's deliberate indifference), the court permitted Ms. Goldstein's Title IX retaliation claims to proceed.

The court dismissed some of Ms. Goldstein's Title VII retaliation claims

Title VII requires plaintiffs to administratively exhaust their claims by filing a charge with the EEOC within 300 days of the alleged harassment, discrimination, or retaliation. Here, the court dismissed all of Ms. Goldstein's Title VII retaliation claims prior to April 9, 2016. However, Ms. Goldstein's retaliatory hostile work environment claims were permitted to proceed in accordance with the continuing violations doctrine. The court found that Ms. Goldstein had sufficiently alleged that she had engaged in protected activity by telling Dr. Crawford to stop his behavior on multiple occasions. It also found that the adverse actions she experienced, such as Dr. Crawford's refusal to perform work tasks that were necessary for Ms. Goldstein's job, hiring a private investigator to spy on Ms. Goldstein after the Title IX office issued a no-contact order, and berating her in a meeting after she had reported his behavior to his supervisor, would discourage a reasonable employee under similar circumstances from engaging in protected activity.

Key Take-Aways

- When a supervisor fails to report an employee's complaint of sexual harassment or discrimination to the appropriate university official (e.g., the Title IX office), the university may be liable for a Title IX claim of deliberate indifference and any resulting retaliation.
- Technicalities, such as an employee receiving funding from a separate entity or devoting part of their work time to a different employer, do not absolve a university of their joint employer liability.
- Because Title IX affords employees the same protections against discrimination on the basis of sex and retaliation as Title VII, employees have an opportunity to sue universities under two separate federal laws based on the same factual allegations.
- Title IX does not have as many procedural requirements as Title VII.
 - Title IX does not require plaintiffs to exhaust their administrative remedies. That means that plaintiffs can file Title IX claims directly with the court without first filing with an administrative agency.
 - Title IX does not contain a statute of limitations. So even when an employee's Title VII claims are time-barred, their Title IX claims may still succeed.