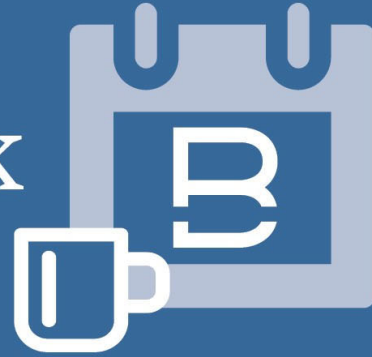


# The Work Week

Bassford Remele Employment Practice Group



**April 1, 2024**

Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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## **Navigating Alleged Workplace Harassment: How a Thorough Workplace Investigation Shields Against Liability**

[Madeline M. Gustafson](#)

When faced with workplace harassment allegations, companies must conduct thorough and non-biased investigations to prevent any future illegal conduct or harassment and to limit their liability should the allegation proceed to a lawsuit. Last week, a recent non-published decision by the Minnesota Court of Appeals, *Roula Mitchell v. Target Corporation*, re-affirmed this reality.

In *Mitchell v. Target*, plaintiff-employee Roula Mitchell told her manager about a sexualized comment that a coworker made to her. In addition, Mitchell asked her manager *not* to formally report her coworker's conduct. The manager responded he was obligated to report the harassment. The employer's human-resources group investigated the incident and found that both the plaintiff-employee and her coworker engaged in prohibited behavior in violation of the employer's harassment-free-workplace policy. In response to the investigation, the employer terminated *both* employees.

Plaintiff-employee brought a lawsuit alleging reprisal under the Minnesota Human Rights Act for reporting the sexual harassment. The district court granted the employer's motion for summary judgment because plaintiff-employee failed to show that the employer's legitimate reason for her termination constituted pretext.

Plaintiff-employee appealed. The Minnesota Court of Appeals affirmed the district court's decision based on three main reasons:

- (1) Temporal proximity alone is not enough to prove reprisal if there is a legitimate reason for termination. The Court of Appeals explained that plaintiff-employee's sole argument that she was fired shortly after she complained of sexual harassment was not enough evidence to rebut Target's legitimate reason for terminating her—that she also engaged in sexual harassment.

- (2) Plaintiff-employee’s arguments that the employer’s anti-harassment policy failed to use the words “zero-tolerance” and that the investigation was not impartial were rejected because the Court of Appeals found both parties were treated equally. In fact, the Court of Appeals pointed out that *both* the complainant and her coworker were terminated for the same type of conduct, which the Court determined to be evidence of a “fair, timely, impartial and thorough” investigation.
- (3) The district court properly assessed pretext and explained that the “honest-belief doctrine” is the proper analysis under the MHRA to determine whether the employer’s “proffered explanation [for the employee’s termination] is worthy of credence.” Here, the Court of Appeals determined that the employer’s explanation was believable because the investigation produced evidence from a third employee that plaintiff-employee also violated the employer’s anti-harassment policy, in addition to the complained-of coworker.

The employer in *Mitchell* conducted a solid investigation and enabled the employer to prevail on summary judgment. Here are the key takeaways from the investigation as lauded by the Court of Appeals:

- (1) The employer conducted an impartial and well-documented investigation;
- (2) The employer interviewed not only the two parties involved in the sexual harassment allegations, but also a neutral third party to corroborate the allegations;
- (3) The employer followed its own written policy for conducting investigations;
- (4) The employer had an internal appeal process for plaintiff-employee to follow; and
- (5) The employer had a written policy prohibiting harassment, allowing it to make clear decisions on whether such conduct was cause for termination.

At [Bassford Remele](#), we regularly conduct employment investigations and even provide complimentary investigation training to our clients. We’re here and ready to offer the same services to you!

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