

## Alicia J. Samolis was recently interviewed by RI Lawyers Weekly regarding a new First Circuit case

PSH Partner, and Employment & Labor Chair, Alicia J. Samolis was recently interviewed by Rhode Island Lawyers Weekly regarding a new First Circuit Case regarding associational discrimination under Title VII.

First Circuit case *Frith, et al. v. Whole Market, Inc., et al.* arose when both black and non-black Whole Foods employees wore “black lives matter” masks to work and were disciplined. Prior to the “black lives matter” mask-wearing, Wholefoods had a policy preventing the display of slogans and statements on worker apparel, but the parties recognized it was not enforced. Once employees started to wear black lives matters masks, Wholefoods began to enforce the policy in a uniform fashion to prohibit various slogans and statements on clothing.

The First Circuit ultimately affirmed the Massachusetts District Court’s dismissal of the case in favor of the employer. The Court rejected the disparate impact claim, given both white and black employees who wore the masks were treated the same, and rejected the retaliation claim, given that the decision to start implementing the policy occurred prior to the plaintiffs’ complaints about the enforcement. More interestingly was the First Circuit’s analysis of the associational discrimination claim. In a favorable turn for employers throughout the First Circuit, the Court rejected the broader Sixth Circuit association standard, which allows for Title VII association claims based upon advocacy for a different protected class. The First Circuit did recognize that association claims could apply to relationships in the workplace, such as here, rather than limiting the claims to the more classic family member association scenario.

In another employer-favorable twist, the Court found that the plaintiffs’ burden of proof was not satisfied as it accepted what the Court referred to as the “obvious alternative explanation” for the enforcement policy, which was to avoid what was “seen as a controversial message associated with a political movement advancing an array of policy proposals.”

Samolis explained to Lawyers Weekly that the decision was overall favorable to employers, as “the court did not find it discriminatory to decide to start enforcing a policy that targets specific behavior [such as wearing black lives matter masks].”

However, Samolis still cautions employers to be mindful about suddenly enforcing previously ignored policies. She stated “employers should not be confident that disciplining a multiracial group of employees [will] not still lead to a race discrimination claim if some employees in the group could be seen as supporting the other members of the group.” She further noted the “win’ came after lengthy and costly litigation. Employers are well advised to follow and enforce their own policies, as practically employees will feel unfairly treated – and may sue – if their coworkers never received discipline for the same conduct earlier in time.”

In the past few years, many workplaces have changed significantly. Samolis encourages employers to update stale policies to reflect current enforcement practices to avoid costly disputes.

Check out the [full article](#), starting on the front cover of the August 1, 2022 issue [subscription required].

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