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# Employers' Indirect Discrimination: DeGrace v. Rumsfeld

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## II. THE EMPLOYER'S ACTIONS AND PROGRAMS: DISCRIMINATION V. NON-DISCRIMINATION

### A. *Employer's Indirect Discrimination: DeGrace v. Rumsfeld\**

Under Title VII of the Civil Rights Act of 1964, "[a]ll personnel actions affecting employees . . . in military departments . . . shall be made free from any discrimination based on race, color, religion, sex or national origin."<sup>1</sup> Typically, an employer will be held liable under section 2000e-1b(a) if it is shown that "but for" his own, direct discrimination, he would not have discharged the plaintiff-employee.<sup>2</sup> Under some circumstances, however, an employer covered by the terms of section 2000e-1b(a) legally may be responsible not only for his own, direct acts of discrimination, but also for the discriminatory conduct of his employees, if such behavior is condoned.<sup>3</sup> Accordingly, where an employee is racially harassed by fellow employees, section 2000e-1b(a) imposed an affirmative duty on the employer to take reasonable measures to correct the situation.<sup>4</sup>

During the *Survey* year, the Court of Appeals for the First Circuit, in *DeGrace v. Rumsfeld*,<sup>5</sup> addressed the question of whether the discriminatory acts of an employee's coworkers could taint a personnel decision regarding that employee so as to make the decision violative of section 2000e-1b(a). In answering this query in the affirmative, the court held that discharging an employee for absenteeism resulting from racial harassment on the part of the employee's coworkers, when uncorrected by the worker's supervisor, is not an employment decision " 'free from any discrimination based on race' " <sup>6</sup> as defined in section 2000e-16(a). This decision is significant in two respects. First, it liberally interprets section 2000e-16(a), finding that an employer's decision to discharge an employee is discriminatory within the meaning of the Act even though the employer himself acted without any discriminatory intent. Second, of equal significance, the court used a "but for" causation test that did not focus on whether the discharge of the employee would have occurred "but for" the employer's discrimination, but instead, examined whether the employee's conduct that led to the discharge would have occurred "but for" the discrimination of other employees at the place of employment. The court's expansive reading of section 2000e-16(a)'s reference to "personnel actions . . . free from

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<sup>1</sup> 42 U.S.C. § 2000e-16(a) (1976). This section provides the exclusive remedy for claims of discrimination in federal employment. *Brown v. General Serv. Admin.*, 425 U.S. 820, 829 (1976). Section 2000e-16(a), however, does not apply to uniformed members of the military, *Johnson v. Hoffman*, 424 F. Supp. 490, 493 (E.D. Mo. 1977), or to discrimination against the physically handicapped, *McNutt v. Hills*, 426 F. Supp. 990, 1002 (D.D.C. 1977).

<sup>2</sup> *Givhan v. Western Consol. School Dist.*, 429 U.S. 410, 417 (1979); *Loeb v. Textron, Inc.*, 500 F.2d 1003, 1019 (1st Cir. 1979). See text at notes 39-43 *infra*.

<sup>3</sup> *Bell v. St. Regis Paper Co., Container Div.*, 425 F. Supp. 1125, 1137 (N.D. Ohio 1976).

<sup>4</sup> *Id.*

<sup>5</sup> 614 F.2d 796, 21 FEP Cas. 1444 (1st Cir. 1980).

<sup>6</sup> *Id.* at 804, 21 FEP Cas. 1449.

any [racial] discrimination” led to the use of the “but for” test in this novel manner, making the employee’s, rather than the employer’s, actions the focus of the inquiry.

In *DeGrace*, the plaintiff was a civilian firefighter employed by the Naval Air Station of South Weymouth (NASSW).<sup>7</sup> In November and December, 1974, he received three notes containing racially offensive comments and threats of harm. Furthermore, at about the same time he also discovered that some of his work equipment had been damaged.<sup>8</sup> DeGrace stated that the notes made him nervous, ill, and afraid to go to work.<sup>9</sup> As a result, he called in sick and remained absent from duty from November 19 through December 21, 1974.<sup>10</sup> At no time did he provide medical certification for his absence.<sup>11</sup> DeGrace had been informed as early as December 6, 1974, that he must submit a written request for continued absence, and state a justification for this request.<sup>12</sup> He was also notified that a failure to get approval of such a request would make him as absent without official leave (AWOL), and subject him to disciplinary action.<sup>13</sup> DeGrace never complied with this requirement.<sup>14</sup> On December 21, 1974, however, DeGrace returned to work stating that he had regained his health and that henceforth he would report for work regularly.<sup>15</sup> Despite these assurances, DeGrace, did not report to work again until January 4, 1975.<sup>16</sup> At that time, he, for the first time, informed his commander of the threatening notes, and revealed that his absence was due to fear for his personal safety.<sup>17</sup> After reading photostatic copies of the notes, his commander reported the incident to the base commanding officer, who ordered an investigation by the Naval Investigating Service (NIS).<sup>18</sup> On January 8, 1975, DeGrace again met with his supervising commander.<sup>19</sup> At this time he stated that his continued absence was due to concern over the notes, although he also indicated that his apprehension would not prevent his return to duty on his next scheduled tour beginning January 10.<sup>20</sup> Again, however, in spite of his

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<sup>7</sup> *Id.* at 798, 21 FEP Cas. 1445. This was the second time that DeGrace had been discharged from his job at the NASSW and the second time that he claimed that his discharge was the product of racial discrimination. DeGrace was first employed at NASSW in June, 1971 and was the only black firefighter during the course of his employment. After a one year probationary period, DeGrace was discharged for failure to “demonstrate qualifications necessary to promote the efficiency of the service.” *Id.* at 799, 21 FEP Cas. 1445. This discharge was appealed through Civil Service Commission procedures. The EEO Complaints Examiner found that the opinions of those who testified against the plaintiff were tainted by racial bias. The Examiner recommended that DeGrace be reinstated, and that his supervisors be admonished. This first discharge was not the subject of the current action. *Id.* at 799-800, 21 FEP Cas. at 1445-46.

<sup>8</sup> *Id.* at 800, 21 FEP Cas. at 1446.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 801, 21 FEP Cas. at 1447.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 800, 21 FEP Cas. at 1446.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 801, 21 FEP Cas. at 1446.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

assurances to the contrary DeGrace did not return until January 22. At that time he met with an NIS investigator, and expressed interest in proceeding with the investigation.<sup>21</sup> Nevertheless, two days after this meeting DeGrace, on advice from his attorney, decided to refrain from cooperating with the investigation.<sup>22</sup> He refused to surrender the originals of the notes for handwriting analysis, and, on his request, the investigation ultimately was cancelled.<sup>23</sup> As a result of DeGrace's failure to seek approval for his continued absence, the NASSW notified him on February 7, 1975, of its intention to discharge him for excessive and unauthorized absenteeism.<sup>24</sup> DeGrace subsequently brought an action in federal district court against the Secretary of Defense and others under 42 U.S.C. § 2000e-16(a), claiming that his discharge was the product of racial discrimination.<sup>25</sup>

The district court found that one or more of DeGrace's coworkers were responsible for the notes.<sup>26</sup> It also found that the coworkers regularly engaged in racially discriminatory conduct toward DeGrace and that at least part of the reason underlying his continuous absence was fear for his personal safety. The court maintained that the NASSW fire department was "infected with pervasive racism"<sup>27</sup> and that the supervisory personnel should have known of this and, taken affirmative steps to correct it.<sup>28</sup> The court found that this obligation had not been satisfied.<sup>29</sup>

Despite these findings, the district court held that the commander was warranted in deciding that DeGrace's absence, without authorization or sub-

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<sup>21</sup> *Id.* 21 FEP Cas. at 1447.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 798, 21 FEP Cas. at 1444. DeGrace initially brought the present suit as a class action against the respondent. The district court certified a class of "all past, present, and future black civilian employees, applicants, and deterred applicants at NASSW." *Id.* at 799, 21 FEP Cas. at 1445. After trial was completed but before a decision was rendered, the class was decertified because plaintiff's interests were not "such as to cause him to fairly and adequately protect the interests of the class." *Id.* (quoting district court's unpublished opinion). The decertification was upheld on appeal. *Id.* at 810-11, 21 FEP Cas. at 1453. The court of appeals recognized that employees may represent job-applicants in class actions, but would not allow plaintiff-employee to do so in this case. *Id.* This conclusion was based on the court's finding that plaintiff's claim did not involve hiring practices, nor did his individual grievance (termination) implicate such practices. Moreover, plaintiff did not seek reinstatement but only damages. Because reinstatement was not sought, plaintiff had no stake in the relief that would be appropriate for a class. For these reasons, the court found that plaintiff was not the proper party to represent the interests of the asserted class. *Id.* 21 FEP Cas. at 1453-54. See also *Young v. Edgcomb Steel Co.*, 363 F. Supp. 961 (M.D.N.C. 1973), modified, 499 F.2d 97 (4th Cir. 1974); *Jackson v. Dukakis*, 526 F.2d 64, 67 (1st Cir. 1975) (employee or former employee is proper representative of non-employees under FED. R. CIV. P. 23); *Wetzel v. Liberty Mut. Ins. Co.*, 508 F.2d 239, 246-47 (3d Cir. 1975), cert. denied, 421 U.S. 1011 (1975) (former employees who did not seek reinstatement are permitted to represent a class of present and future employees where the former employees' individual claim implicates hiring practices affecting all class members).

<sup>26</sup> *DeGrace*, 614 F.2d at 800, 21 FEP Cas. at 1446.

<sup>27</sup> *Id.* at 803, 21 FEP Cas. at 1448 (quoting the opinion of the district court which is unreported).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

stantial excuse, was grounds for dismissal.<sup>30</sup> The court concluded that the discharge was the product of the commander's concern about the danger created by an understaffed firefighting force, and was not the result of any racial consideration.<sup>31</sup> Accordingly, the court refused to grant any relief to DeGrace.<sup>32</sup>

On appeal before the United States Court of Appeals for the First Circuit, DeGrace claimed that the district court erred in holding that his discharge was not the result of racial discrimination within the meaning of section 2000e-16(a). He argued that this conclusion was inconsistent with the court's findings that the fire department was replete with racism, and that his superiors had done nothing to ameliorate this situation.<sup>33</sup> The court of appeals agreed with DeGrace, and therefore, reversed the district court. In doing so, the court of appeals focused on the relationship between DeGrace's fear, stemming from racial harassment by his coworkers, and his prolonged absence from work.<sup>34</sup> The court concluded that although the actual decision to discharge may have been free of any racial bias, DeGrace's absenteeism was the product of both racial harassment and his supervisor's failure to prevent such misconduct.<sup>35</sup> Thus, the district court was correct in finding that there was no direct relationship between DeGrace's discharge and any racial discrimination on the commander's part. The discharge, however, was the indirect result of racial discrimination, and the court failed to recognize that such indirect discrimination falls within the purview of section 2000e-16(a). Consequently, the district court erred in finding that the discharge was "free from *any* racial discrimination based on race"<sup>36</sup> and in assuming that there was no basis for relief in the absence of any direct racial bias on the commander's part. Accordingly, the court of appeals vacated the lower court's judgment and remanded the case for further findings.<sup>37</sup>

In making its decision, the court of appeals articulated the burden of proof that a plaintiff-employee must satisfy to establish a section 2000e-16(a) violation.<sup>38</sup> In order to prevail, an employee who claims that his discharge was based on absenteeism stemming from offensive conduct of fellow employees must establish: (1) that the misconduct of his coworkers was racially motivated and that it reasonably placed him in fear for his personal safety; (2) that his supervisor was or should have been aware of this misconduct and of the employee's fear, but failed to take reasonable measures to deal with the situation; (3) that he would have reported to work but for his reasonable fear, and his supervisor's culpable failure to take corrective action; and (4) that he acted reasonably under the circumstances.<sup>39</sup>

Next the court considered the adequacy of the district court's findings as to each element of this four part test.<sup>40</sup> First, with regard to the reasonableness

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* 21 FEP Cas. at 1449.

<sup>36</sup> *Id.* at 804, 21 FEP Cas. at 1449 (quoting 42 U.S.C. § 2000e-16(a) (emphasis added)).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 804-07, 21 FEP Cas. at 1449-51.

of plaintiff's fear for his personal safety, the appellate court concluded that the findings below were sufficient to indicate that DeGrace's fear was both reasonable and the product of the racial misconduct of other employees.<sup>41</sup>

As for the second element, whether NASSW acted reasonably after it knew or should have known of DeGrace's fear, the court of appeals found the analysis of the district court to be incomplete.<sup>42</sup> Although the lower court found that NASSW could have done more to dissipate the racially hostile climate, it did not make an express finding as to whether NASSW had acted reasonably after learning of the threatening notes. The court of appeals acknowledged that the Navy had instigated investigation, which DeGrace had opposed, but stated that other corrective measures may have been available.<sup>43</sup>

With regard to the third element of proof, whether DeGrace would have reported to work but for his reasonable fear of harm, the court of appeals characterized the district court's findings as ambiguous.<sup>44</sup> The court of appeals stated that plaintiff could prevail only if his fear was the "determinative factor"<sup>45</sup> with regard to his absence. It emphasized that "[a] proper excuse such as fear for personal safety, reasonably based, must not only be available to the plaintiff, but plaintiff must actually be acting on this ground before he can claim his absence was justified."<sup>46</sup> Although the lower court determined that fear was "at least part"<sup>47</sup> of the reason for his absence, this finding fell short of the requirement that "but for" this fear, DeGrace would have returned to work.<sup>48</sup> The district court's opinion was also inadequate because it failed to determine whether plaintiff's fear was reasonable for the entire length of his absence or only for a portion of that time.<sup>49</sup>

<sup>41</sup> *Id.* at 804, 21 FEP Cas. at 1449. Although the district court did not expressly qualify plaintiff's fear as reasonable, it did find that the notes were authored by his coworkers. The court of appeals stated that "[i]mplicit is the finding that the fear stems from the notes since there is no other reason for plaintiff's apprehension," and that "defendants [do not] contend that fear would be an unreasonable, aberrational response to notes of such a tenor especially in light of firefighters' occupational situation where mutual dependency and cooperation is required for safe firefighting." *Id.*

<sup>42</sup> *Id.* at 805, 21 FEP Cas. at 1449-50.

<sup>43</sup> *Id.*, 21 FEP Cas. at 1450. One alternative measure suggested by the court of appeals was intradepartmental investigation which, it noted, plaintiff claimed to favor. *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 806, 21 FEP Cas. at 1450.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* (quoting from the district court's opinion).

<sup>48</sup> *Id.* The "but for" test was enunciated by the United States Supreme Court in *Mt. Healthy City Bd. of Educ. v. Doyle*, 429 U.S. 274 (1977). In *Mt. Healthy*, a discharged non-tenured teacher claimed that a school district's refusal to rehire him was based upon the exercise of his right of free speech. Thus, he asserted that the discharge violated his first and fourteenth amendment rights and sought reinstatement and damages. The court held that although constitutionally protected conduct played a substantial part in the decision not to rehire the plaintiff, the decision was not necessarily a constitutional violation. *Id.* at 285. The Board could escape liability, if it could, by a preponderance of the evidence, that it would have reached the same decision in the absence of the protected conduct. *Id.* at 287. In essence, the Board had to prove that there was no "but for" relation between its decision and the teacher's speech.

<sup>49</sup> *DeGrace*, 614 F.2d at 806, 21 FEP Cas. at 1450. DeGrace was absent from November 17, 1974 to January 22, 1975. The court of appeals directed the district court to determine if DeGrace's absence for this length of time was reasonable. If the district court found that this absence was unreasonably excessive, it was then to determine whether DeGrace's absence was

Regarding the fourth element of proof, requiring that the plaintiff show that he acted reasonably under the circumstances, the court of appeals reached several important conclusions. Noting that "[n]ot every response by the victim of racial discrimination can be excused,"<sup>50</sup> the court stated that DeGrace had a duty to act reasonably.<sup>51</sup> This duty required him to bring matters to the attention of NASSW in a timely fashion, and to cooperate with, or at least not impede, NASSW's good faith effort to correct the situation.<sup>52</sup> Specifically, the court stated that DeGrace could not block NASSW's investigations without explaining his reasons for such action and at the same time assert his right to remain absent.<sup>53</sup> To illustrate the importance of an employee's cooperation with his employer in this situation, the court of appeals noted that when DeGrace was discharged, his commander erroneously thought that the absence was due to physical illness that had not been verified because of DeGrace's failure to comply with the procedures for acquiring an authorized leave of absence.<sup>54</sup>

Because of the various shortcomings in the findings of the district court, the court of appeals directed the lower court to decide on remand whether DeGrace's commander should have been aware of the racial misconduct of the employees and/or DeGrace's corresponding fear; whether the commander, assuming he was aware of the problem, *failed* to take reasonable measures to correct the situation; whether DeGrace would have reported to work but for his fear; and whether DeGrace acted reasonably under the circumstance.<sup>55</sup> An affirmative finding with respect to each of these issues would result in relief for DeGrace.

The DeGrace opinion evidences a judicial willingness to define broadly the section 2000e-16(a) relationship between racial discrimination and personnel actions. It interpreted 2000e-16(a) to proscribe not only employment decisions that are the direct product of racial discrimination but also those that arise indirectly from such discrimination, that is from the conduct of third parties not involved in the decisionmaking process. With this expansive approach comes a corresponding increase in an employer's potential liability under Title VII. Although the *DeGrace* court recognized that an employer cannot be required to guarantee a working environment free from any racial bias, the employer must "let it be known . . . that racial harassment will not be tolerated," and must "take all reasonable measures to enforce this policy."<sup>56</sup> The court, however, did not articulate specifically how much an employer must do to avoid liability.<sup>57</sup> Thus, an employer can be liable for a Title VII violation where he discharges an employee for reasons that are normally proper grounds for a discharge. To avoid such liability, the employer must demonstrate either

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reasonable in the period before he informed the commander about the notes (November 19-December 21, 1974) or until January 4, 1975 when he stated he was not afraid to return to work.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 807, 21 FEP Cas. at 1451.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 805, 21 FEP Cas. at 1449.

<sup>57</sup> *Id.* at 807, 21 FEP Cas. at 1451.

that it was reasonable for him to be unaware of the racial misconduct of other employees, or that he took reasonable corrective measures. Even if he acted unreasonably, he could escape liability by showing that the worker's conduct, which formed the basis of the discharge, was an unreasonable response to the harassment by his coworkers.

Because the court of appeals did not specify the limits of its decision, it is conceivable that its holding could be applied to circumstances in which the employer would become responsible for the actions of third party non-employees under Title VII. For example, if non-employees harassed black employees on the employment premises, it seems clear that the *DeGrace* court would require the employer to take reasonable steps to correct the situation. The employer's responsibility, however, is less clear where such harassment occurs in a place other than the employment premises. If harassment took place in a location where the employee was required to go to perform his duties the employer well may be obligated to attempt to stop it under *DeGrace*. The further removed the harassment is from the workplace, however, the less reasonable it becomes for the employer to have a responsibility to prevent it under Title VII. Thus, if a black employee receives threatening letters regarding his employment at home from non-employees, there is probably little that the employer can do to assuage the situation. That non-employees are the harassing parties must enter into a determination both of what is reasonable for the employer to do and also of what is a reasonable response to the situation by the employee qua employee. An even more important aspect of the *DeGrace* decision lies in the court's application of the "but for" causation test of Title VII. The court cited the United States Supreme Court cases of *Mt. Healthy City Board of Education v. Doyle*<sup>58</sup> and *Givhan v. Western Line Consolidated School District*,<sup>59</sup> and the First Circuit decision of *Loeb v. Textron*<sup>60</sup> as authority for its use of a "but for" requirement. These cases employed the "but for" test to determine whether an employer's decision to terminate an employee was justified. Under the *Mt. Healthy* line of cases an employer's decision to terminate an employee violated section 2000e-16(a) if the discharge would not have occurred "but for" some direct act of discrimination on the employer's part.<sup>61</sup> In

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<sup>58</sup> 429 U.S. 274 (1977); see note 31 *supra*.

<sup>59</sup> 439 U.S. 410 (1979).

<sup>60</sup> 600 F.2d 1003 (1st Cir. 1979).

<sup>61</sup> For the holding in *Mt. Healthy*, see note 31 *supra*. *Givhan* involved a fact situation similar to that of *Mt. Healthy*. In *Givhan*, a discharged teacher intervened in a desegregation action against respondent, claiming, *inter alia*, that her dismissal was based on her criticism of the school board, and, therefore, infringed upon her right of free speech under the first and fourteenth amendments. The court held that in order for the teacher to prevail, the district court must find that her criticism of the school board was not only the primary reason for her discharge, but that the board would not have discharged her "but for" her exercise of first amendment protected speech. 439 U.S. at 417. The *Givhan* Court cited the *Mt. Healthy* decision as support for the "but for" test. *Id.*

In *Loeb v. Textron, Inc.*, 600 F.2d 1003 (1st Cir. 1979), the plaintiff-employee claimed that his discharge violated Title VII because it was based on age discrimination. The court required plaintiff to show that "but for" his employer's discriminatory intent, he would not have been dismissed. *Id.* at 1019. It is interesting to note that in *Loeb*, the employee was required to satisfy the "but for" causation requirement for recovery.



*DeGrace*, the court did not focus on the reasonableness of the employer's decision to discharge the employee but rather, on the reasonableness of the employees that lead to the discharge. The real issue before the court was whether firing an employee for his behavior was reasonable when the behavior might be a reasonable response to the racism of his fellow employees. Because the employee's conduct was at issue the *DeGrace* court subjected it, and not the employer's actions to the "but for" analysis. It required the employee to show that "but for" the fear reasonably resulting from the racial misconduct of his fellow employees, he would not have been absent.<sup>62</sup> If *DeGrace's* absence was shown to have resulted from the racial discrimination of his coworkers, then his supervisor's decision to discharge him was based indirectly on racial discrimination, and thus, in violation of Title VII.

The *DeGrace* court's use of the "but for" test to scrutinize an employee's, rather than the employer's, conduct is novel yet logical. As a means of establishing a Title VII violation, it is a fair approach to dealing with the statute. By broadly defining "personnel action . . . free from any discrimination," the court recognized that a personnel action may be tainted with discrimination although the employer acted without discriminatory intent. Thus, under the *DeGrace* court's approach, an employee need not show discriminatory intent on the part of his employer but may prove a Title VII violation by demonstrating that his own conduct, which admittedly was the basis for the employer's decision to discharge, would not have occurred "but for" the racial discrimination of his coworkers.

Prior to *DeGrace*, section 2000e-16a had been the source of the employer's affirmative duty to take reasonable steps to control and correct the racial misconduct of his employees.<sup>63</sup> In *DeGrace*, the court of appeals used this as its starting point. By interpreting section 2000e-16(a) to proscribe employment decisions based both on direct and indirect racial discrimination, the *DeGrace* court went further than its predecessors. The net result of its decision is that in addition to relying on an employer's duty to attempt to abate the racism of an employee's coworkers, the employee may take his own reasonable steps to cope with the situation. Since the employee is the target of such racism it seems fair that he be given some leeway in responding to it without jeopardizing his job status.

#### B. *Employer's Retaliatory Action: Monteiro v. Poole Silver Co.*\*

Section 704(a) of Title VII protects employees from retaliatory action for opposing an unlawful employment practice.<sup>1</sup> In pertinent part the section provides: "It shall be an unlawful employment practice for an employer to dis-

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<sup>62</sup> *DeGrace*, 614 F.2d at 805, 21 FEP Cas. at 1450.

<sup>63</sup> *Bell v. St. Regis Paper Co., Container Div.*, 425 F. Supp. 1126 (N.D. Ohio 1976).

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<sup>1</sup> 42 U.S.C. § 2000e-3(a) (1976). The section also protects employees from retaliatory action for participating in Title VII proceedings.