

No. 26-2432

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

SANAIYA CARLTON,
Plaintiff-Appellant,

v.

NATIONAL DEBT RELIEF LLC, ET AL.
Defendant-Appellee.

On Appeal from the United States District Court
for the District of New Jersey, No. 2:26-cv-00944
Hon. William J. Martini, United States District Judge

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STATEMENT OF INTEREST

Congress charged the Equal Employment Opportunity Commission (“Commission”) with administering and enforcing Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* (“Title VII”). In this discrimination case, brought under the New Jersey Law Against Discrimination, N.J. Stat. Ann. §§ 10:5-1 *et seq.* (“NJLAD”), the district court held that the plaintiff had not alleged sexual harassment that would preclude the case from mandatory arbitration under the terms of the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, 9 U.S.C. §§ 401-402 (“EFAA”). In reaching that conclusion, the court relied in part on authorities addressing Title VII sex discrimination claims to narrowly define “sexual harassment” as limited to unwanted sexual advances or other conduct of a sexualized nature.

The district court’s understanding of sexual harassment for Title VII purposes was incorrect. This Court, the Supreme Court, and other authorities have long recognized that sexual harassment under Title VII is not limited to conduct of a sexual nature, but instead more broadly includes any harassing conduct based on the victim’s sex.

Given the importance of the proper interpretation of Title VII to the Commission's enforcement efforts, we respectfully offer our views to this Court. As a federal agency, the Commission is authorized to participate as amicus curiae in the courts of appeals. Fed. R. App. P. 29(a)(2).

STATEMENT OF THE ISSUE¹

Is Title VII's protection against sexual harassment narrowly limited to harassment involving sexual advances or other conduct of a sexual nature?

STATEMENT OF THE CASE

A. Statement of Facts²

In early 2023, plaintiff Sanaiya Carlton began working for defendant National Debt Relief LLC ("NDR") as an Account Specialist, Debt Specialist – Sales. Appx.0012. On or about September 5, 2025, Carlton emailed her manager and NDR's Human Resources department to notify them that she was pregnant, with an estimated due date of March 22, 2026. Appx.0013.

¹ The Commission expresses no opinion as to any other issue in this appeal, including whether the allegations here are sufficient to present a sexual harassment dispute.

² The information in this subsection regarding the plaintiff's alleged discriminatory treatment is taken from the plaintiff's complaint.

Three days later, NDR placed Carlton on a Performance Improvement Plan (“PIP”) for the month of September 2025. *Id.* Carlton disputed the performance metrics NDR relied upon to support the PIP as inaccurate. *Id.*

On September 10, an NDR Benefits & Wellness Specialist informed Carlton that because her child’s due date was in October 2025, Carlton would need to complete paperwork to take Family and Medical Leave Act leave. Appx.0013-0014.

On September 29, NDR terminated Carlton. Appx.0014. During a call with an NDR Conference Manager, a Human Resources representative, and Carlton, the NDR officials informed Carlton that her termination was based on allegations that she cursed or otherwise used profanity on a client call the previous month. Appx.0010, 0011, 0014. Carlton requested written documentation of the reasons for her termination and asked to hear the audio recording of the call in which she allegedly used profanity, but the officials refused. Appx.0014. During this conversation Carlton also objected that NDR was discriminating against her based on her pregnancy. Appx.0015. The NDR officials did not directly address Carlton’s discrimination complaint. *Id.*

Carlton filed suit in New Jersey state court, alleging two counts of discrimination under state law: “Disparate Treatment and Hostile Work Environment Discrimination Due to Pregnancy and/or Gender,” and “Retaliation/Improper Reprisal.” Appx.0016, 0020. NDR removed the suit to federal court and then moved to compel arbitration pursuant to the terms of the arbitration agreement Carlton signed when she was hired. Appx.0001-0006 (Notice of Removal); district court docket number (“R.”) 8-1 (Motion to Compel Arbitration); R.8-2 (Declaration in Support of Motion). Carlton responded that the EFAA barred enforcement of the arbitration agreement because her claims “constitute, and relate to, sexual harassment under the EFAA,” even though they were not “styled” as sexual harassment. R.11 at 7, 9, 10 (Brief in Opposition to Motion).

B. District Court Decision

The district court granted NDR’s motion to compel arbitration, concluding in relevant part that the EFAA did not apply to Carlton’s sex discrimination claims (including her claim of pregnancy discrimination). Appx.0039-0047. The court acknowledged that EFAA precludes employers from unilaterally compelling arbitration of sexual harassment disputes. Appx.0042 (quoting *Cornelius v. CVS Pharmacy, Inc.*, No. 23-1858, 2023 WL

6876925, at *3 (D.N.J. Oct. 18, 2023)). But it rejected Carlton’s argument that her claims constituted sexual harassment disputes, stating that “sex discrimination and sexual harassment are ‘conceptually distinct.’” Appx.0042-0043 (quoting *Bostock v. Clayton Cnty.*, 590 U.S. 644, 669 (2020)).³ This, the court stated, is because the former involves “discriminating against someone because of his or her sex,” while the latter involves “unwelcome sexual advances or other verbal or physical contact of a sexual nature.” Appx.0043 (quoting *Cornelius*, 2023 WL 6876925, at *3). Based on these differences, the court reasoned that “a sex discrimination claim is not coextensive with a sexual harassment claim . . . and does not trigger the EFAA’s bar on arbitration.” *Id.* (citing *Cornelius*, 2023 WL 6876925, at *3-4; *Foster v. Horizon Dental Care at Steamtown, Inc.*, No. 25-1424, 2026 WL 353243, at *9 (M.D. Pa. Feb. 9, 2026); *Moulds v. Skillcycle, Inc.*, No. 23-4873, 2024 WL 2206464, at *1 n.1 (E.D. Pa. Mar. 27, 2024)).

After recounting Carlton’s allegations of NDR’s discriminatory treatment, the court concluded that the complained-of conduct did not

³ The court explained that although *Bostock* is a Title VII sex discrimination case, *see* 590 U.S. at 649-52, the New Jersey Supreme Court “frequently looks to federal standards” when interpreting the NJLAD. Appx.0042 n.2 (citations omitted).

“allege *any* conduct that could support a sexual harassment claim,” and that Carlton’s “sex and pregnancy-based discrimination claims are not sexual harassment claims that fall within the scope of the EFAA.”

Appx.0044. Accordingly, the court granted NDR’s motion to compel arbitration. Appx.0047.

ARGUMENT

The EFAA does not require a plaintiff pleading sexual harassment under Title VII to allege sexual advances or conduct motivated by sexual desire.

In reaching the conclusion that Carlton’s state-law claim does not present a “sexual harassment dispute” for purposes of the EFAA, the district court here—following similar rulings of district courts within this circuit—misconstrued the definition of sexual harassment in the Title VII context. Contrary to the district court’s opinion, Title VII does not require a plaintiff to allege she was subjected to sexual advances or other conduct of a sexual nature in order to state a claim of sex discrimination based on sexual harassment. Instead, to fall within the ambit of the EFAA, a Title VII plaintiff need only allege harassment based on the employee’s sex, whether or not the harassment involved sexualized behavior.

A. The EFAA does not limit qualifying “sexual harassment disputes” to claims containing allegations of sexual advances or other harassing conduct of a sexual nature.

Under the EFAA, a plaintiff “alleging conduct constituting a sexual harassment dispute or sexual assault dispute” may bring her claims in court even if there is a “predispute arbitration agreement” that would otherwise require arbitration of her claims. 9 U.S.C. § 402(a). For those cases, “the EFAA renders arbitration agreements invalid and unenforceable, at the election of the complainant.” *Cornelius v. CVS Pharmacy Inc.*, 133 F.4th 240, 245 (3d Cir. 2025) (citation modified).

The EFAA does not adopt a specific standard for determining when a complaint alleges a “sexual harassment” dispute. Instead, it casts a wide net, covering disputes “relating to conduct that is alleged to constitute sexual harassment under applicable Federal, Tribal, or State law.” 9 U.S.C. § 401(4); *see, e.g., Bruce v. Adams & Reese, LLP*, 168 F.4th 367, 375-77 (6th Cir. 2026) (in Title VII suit, assessing whether the plaintiff has sufficiently alleged sexual harassment for EFAA purposes by reference to Title VII standards for hostile work environment claims). For purposes of applying the EFAA in this case, then, the relevant question is whether the plaintiff’s complaint alleges sexual harassment as recognized under New Jersey state

law. Because courts interpreting the NJLAD look to Title VII for interpretive guidance, *see, e.g., Moody v. Atl. City Bd. of Educ.*, 870 F.3d 206, 213 n.9 (3d Cir. 2017); *Quinlan v. Curtiss-Wright Corp.*, 8 A.3d 209, 222 (N.J. 2010), we present our views on the proper interpretation of sexual harassment claims under Title VII.

B. Title VII’s prohibition of sexual harassment is not limited to harassing conduct of a sexual nature, but more broadly includes any harassing conduct based on sex.

Title VII does not use the term “sexual harassment,” let alone define it. The statute prohibits discrimination because of sex in the “terms [or] conditions” of employment. 42 U.S.C. § 2000e-2(a)(1). This prohibition extends to pregnancy discrimination. *See Newport News Shipbuilding & Dry Dock Co. v. EEOC*, 462 U.S. 669, 678 (1983) (noting that Congress amended Title VII in 1978 to explicitly define the statute’s use of the terms “because of sex” or “on the basis of sex” to include “because of or on the basis of pregnancy” (quoting 42 U.S.C. § 2000e-2(k))); *Peifer v. Bd. of Prob. & Parole*, 106 F.4th 270, 276 (3d Cir. 2024) (recognizing same).

The Supreme Court has long interpreted the prohibition against sex-based discrimination to forbid harassment because of sex. *See, e.g., Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 65-67 (1986). Because sex discrimination

includes pregnancy discrimination, the statute also forbids pregnancy-based harassment. *Walsh v. Nat'l Comput. Sys., Inc.*, 332 F.3d 1150, 1160 (8th Cir. 2003) (recognizing pregnancy-based hostile work environment claim as sex discrimination under Title VII); EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues, No. 915-003, at I.B.1.a (June 25, 2015), <https://www.eeoc.gov/laws/guidance/enforcement-guidance-pregnancy-discrimination-and-related-issues#IB1a> (discussing how pregnancy discrimination is sex discrimination for purposes of Title VII, and how Title VII protects against pregnancy-based harassment).

Although the facts in *Meritor* concerned sexual advances, the Court recognized that Title VII's prohibition on sexual harassment extends more broadly, "afford[ing] employees the right to work in an environment free from discriminatory intimidation, ridicule, and insult." *Meritor*, 477 U.S. at 65; see also *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79-80 (1998) ("Title VII prohibits 'discriminat[ion] . . . because of . . . sex' in the 'terms' or 'conditions' of employment. Our holding that this includes sexual harassment must extend to sexual harassment of any kind that meets the statutory requirements."). As the Supreme Court explained in *Oncale*, "harassing conduct need not be motivated by sexual desire." 523 U.S. at

80; *see also Burns v. Johnson*, 829 F.3d 1, 17 (1st Cir. 2016) (describing as “an important controlling principle” *Oncale*’s recognition that “harassing conduct need not be motivated by sexual desire to support an inference of discrimination on the basis of sex” (citation modified)).

This Court agrees. *See, e.g., Andrews v. City of Phila.*, 895 F.2d 1469, 1485 (3d Cir. 1990) (explaining that *Meritor* recognized employees’ right to work in an environment free of intimidation and ridicule, and “in no way limited this concept to intimidation or ridicule of an explicitly sexual nature”). This Court has long held that “an employee can demonstrate that there is a sexually hostile work environment without proving blatant sexual misconduct,” as “the intent to discriminate on the basis of sex could be demonstrated through actions which ‘are not sexual by their very nature.’” *Spain v. Gallegos*, 26 F.3d 439, 447 (3d Cir. 1994) (quoting *Andrews*, 895 F.2d at 1482 n.3). Accordingly, this Court does not require a plaintiff alleging sexual harassment to present evidence of sexual advances, overtly sexual words or actions, or other indicators that the harasser was motivated by sexual desire. *Andrews*, 895 F.2d at 1485.

To the contrary, this Court has held that a district court errs when it “too narrowly construe[s] what type of conduct can constitute sexual

harassment” by emphasizing the lack of such sexualized behavior. *Id.*; see also *id.* at 1486 (instructing district court on remand to consider, among other evidence, “disappearance of plaintiffs’ case files and work product, anonymous phone calls, and destruction of other property” in assessing sexual harassment claim); *Prowel v. Wise Bus. Forms, Inc.*, 579 F.3d 285, 291-93 (3d Cir. 2009) (reversing summary judgment on plaintiff’s sexual harassment claim based on evidence of harassment that was not in the form of sexual propositions or other conduct of a sexual nature); *Spain*, 26 F.3d at 447-48 (considering shunning, poor performance evaluation, and denied promotion as part of “sexually hostile work environment”).

C. The drafting history of the EFAA reveals that Congress understood sexual harassment could include all harassing conduct based on sex, regardless of whether the conduct is of a sexualized nature.

The broad definition of sexual harassment described above is consistent with the drafting history of the EFAA and Congress’ decision not to require sexual advances or explicitly sexual motivation as a condition of coverage. In an earlier version of the bill, Congress considered defining a “sexual harassment dispute” as:

[A] dispute relating to any of the following conduct directed at an individual or a group of individuals:

- (A) Unwelcome sexual advances.
- (B) Unwanted physical contact that is sexual in nature, including assault.
- (C) Unwanted sexual attention, including unwanted sexual comments and propositions for sexual activity.
- (D) Conditioning professional, educational, consumer, health care or long-term care benefits on sexual activity.
- (E) Retaliation for rejecting unwanted sexual attention.

Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, H.R. 4445, 117th Cong. § 401(4) (July 16, 2021). But Congress did not adopt that language. Instead, it broadened the definition in the final version of the EFAA, allowing the statute's scope to match that of Title VII and other laws prohibiting sexual harassment. *See* 9 U.S.C. § 401(4) (enacted version, defining a "sexual harassment dispute" as "relating to conduct that is alleged to constitute sexual harassment under applicable Federal, Tribal, or State law"); 168 Cong. Rec. H991 (daily ed. Feb. 7, 2022) (statement of Rep. David Scott) (explaining that the final bill rejected a narrow focus on sexualized conduct and instead "embrac[ed] sexual harassment jurisprudence, which encompasses a broader array of

harassing conduct” that includes harassment that “is not sexual in nature but is motivated by a sex-based animus or hostility”).

D. The district court’s narrow interpretation limiting sexual harassment to sexualized conduct is incorrect.

The district court’s restrictive view of sexual harassment as limited to “unwelcome sexual advances or other verbal or physical contact of a sexual nature,” Appx.0042-0044, cannot be reconciled with the controlling authority described above that defines sexual harassment as including all sex-based harassing conduct, regardless of whether the conduct is of a sexual nature. Nor does the authority cited by the district court support its definition of sexual harassment.

First, the district court relied on *Bostock* for the proposition that sex discrimination and sexual harassment are “conceptually distinct.” Appx.0042 (quoting 590 U.S. at 669). This reliance was misguided. *Bostock* was not a sex harassment case and did not purport to describe the standards for assessing such a claim. *See* 590 U.S. at 669-70. Instead, the Court offered the “conceptual[] distinct[ion]” between sex discrimination and sexual harassment merely to illustrate how, “when Congress chooses

not to include any exceptions to a broad rule, courts apply the broad rule.”

Id. at 669.

The district court’s reliance on the nonprecedential district court decisions *Cornelius*, *Foster*, and *Moulds* was equally misplaced. *See* Appx.0043. *Cornelius* narrowly interpreted sexual harassment as encompassing only “unwelcome sexual advances or other verbal or physical contact of a sexual nature” in concluding that the plaintiff had failed to allege sexual harassment for purposes of the EFAA. 2023 WL 6876925, at *3-4 (citation omitted). As explained above, that conclusion is incorrect. *See supra* pp. 7-13.⁴ *Cornelius* also relied on, but fundamentally misunderstood, this Court’s decision in *Bibby v. Philadelphia Coca Cola Bottling Co.*, 260 F.3d 257 (3d Cir. 2001). *Cornelius*, 2023 WL 6876925, at *3. Contrary to *Cornelius* and the district court here, *Bibby* recognized that Title VII’s protection against sexual harassment is not limited to sexual propositions or other conduct of a sexual nature and instead extends to all

⁴ This Court affirmed *Cornelius*, but on different grounds (timing) than the district court’s ruling, and in so doing did not address whether for Title VII purposes a sexual harassment claim is limited to unwelcome sexual advances or other conduct motivated by sexual desire. *See Cornelius*, 133 F.4th at 245 & n.7.

harassment based on “hostility to the presence of a particular sex in the workplace.” *Bibby*, 260 F.3d at 262-64.

The district court’s reliance on *Foster* and *Moulds* was similarly erroneous. In *Foster* the district court refused to preclude arbitration pursuant to the EFAA because the plaintiff had failed plausibly to allege *severe or pervasive* harassing conduct. *Foster*, 2026 WL 353243, at *5-6, *9. *Foster* never suggested that the alleged harassing conduct did not qualify as sexual harassment for purposes of the EFAA because sexual propositions or other conduct of a sexual nature were absent. *See id.* And *Moulds* simply cites the district court decision in *Cornelius* and repeats that court’s flawed approach. *See Moulds*, 2024 WL 2206464, at *1 n.1.

CONCLUSION

For the foregoing reasons, the Commission respectfully requests that this Court hold that the district court erred in requiring Carlton to allege sexualized conduct to sufficiently plead a claim of sexual harassment.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to 3d Cir. L.A.R. 28.3(d) and 46.1(e), I certify that, as an attorney representing an agency of the United States, I am not required to be admitted to the bar of this Court. *See* 3d Cir. L.A.R. 28.3, comm. cmt. I also certify that all other attorneys whose names appear on this brief likewise represent an agency of the United States and are also not required to be admitted to the bar of this Court. *See id.*

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B)(i) because it contains 2,871 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), as determined by Microsoft Word for Microsoft 365.

Pursuant to 3d Cir. L.A.R. 31.1(c), I certify that the text of the electronically filed version of this brief is identical to the text of the hard copies of the brief that will be filed with the Court.

I further certify pursuant to 3d Cir. L.A.R. 31.1(c) that, prior to electronic filing with this Court, I performed a virus check on the electronic version of this brief using Microsoft Defender Antivirus version 1.457.346.0, and that no virus was detected.

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CERTIFICATE OF SERVICE

I certify that on August 27, 2026, I electronically filed the foregoing brief in PDF format with the Clerk of Court via the appellate CM/ECF system. I certify that all counsel of record are registered CM/ECF users, and service will be accomplished via the appellate CM/ECF system.

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