Valuing Coworker Bonds in Employment Law

Author : Alex B. Long

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Naomi Schoenbaum, Toward a Law of Coworkers, 68 **Ala. L. Rev.** 605 (2017).

In Jackson v. Deen, 959 F. Supp. 2d 1346 (S.D. Ga. 2013), an employee brought a Title VII claim against her employer on the grounds that her coworkers had been subjected to racial harassment. The employee did not complain that she had been subjected to such harassment. Instead, she claimed to have suffered a cognizable injury because her employer's harassment of coworkers "deprived her of 'harmonious working relationships with her African-American subordinates …'" *Id.* at 1354. Rejecting the notion that the plaintiff was an aggrieved party under Title VII, the court explained that "[q]uite simply, workplace harmony is not an interest sought to be protected by Title VII." *Id.* at 1355. In her article, *Toward a Law of Coworkers*, Professor Naomi Schoenbaum recognizes that this may be true as a matter of current employment law, but she takes issue with the notion that workplace harmony is not an interest worth protecting through employment law.

The premise of Schoenbaum's article is relatively straightforward: modern employment law is so focused on individual rights that it is generally unconcerned about encouraging coworker bonds. One of the things that makes this thought-provoking article so interesting, however, is how clearly Schoenbaum explains exactly *how* employment law undermines coworker bonds and exactly *why* that is a bad thing.

The article begins by explaining some of the benefits of strong employee bonds. As Schoenbaum argues, strong coworker relationships increase the odds that employees will be able to obtain from their coworkers the information necessary to better assess whether their workplace rights may have been violated. They also increase the likelihood that coworkers will provide the emotional and other forms of support that may lead an employee to seek to vindicate her rights. Strong coworker bonds also encourage the sort of supportive behavior that discourages coworker or supervisor harassment and discrimination to begin with. Unfortunately, employment law often does little to encourage such relationships, nor does it seem to recognize that fostering such relationships is a recognizable goal of most employment statutes. Schoenbaum provides numerous examples of how modern employment law fails to give due weight to the value of strong workplace relationships and how that failure may adversely impact employees.

The example that resonated most clearly with me is workplace retaliation. An employee who complains internally about workplace discrimination is protected from employer retaliation only where the employee reasonably believed that the allegedly discriminatory actions were unlawful. Some courts have adopted a fairly demanding threshold for what qualifies as a "reasonable" belief. In order to better understand her legal rights, an employee might obviously seek out coworkers for their reactions to the employee's situation or to see whether they have experienced similar treatment. But in a workplace where employees feel disconnected from their coworkers, an employee might be unable to acquire the information necessary to decide whether a reasonable basis exists for believing unlawful conduct has occurred. An employee who files an internal complaint of discrimination might also seek the assistance and support of a coworker during the process. But Title VII's anti-retaliation provision as interpreted by federal courts does not protect those who assist another as part of an employer's internal complaint procedure unless they actually make a point of demonstrating opposition to the employer's actions. Given the current state of the law, a coworker could hardly be blamed for not rendering assistance as

part of an internal investigation. Ultimately, this thwarts the purposes underlying anti-discrimination statutes.

Assuming employment law should encourage employee bonds – hardly a radical notion in light of labor law's longstanding declarations in support of that very idea – the question becomes how can courts further this goal? In *Jackson v. Deen*, the court scoffed at the idea that an employee should have a cause of action for discrimination targeted at coworkers. The court complained that allowing this would "conscript federal courts as human resource departments that are responsible for imposing and monitoring a federally created standard for harmony in the workplace." *Id.* at 1354-55. In the face of such judicial disdain (which is undoubtedly shared by many judges), Schoenbaum presents a problem with no easy solution.

Schoenbaum offers a number of doctrinal reforms that "would recognize coworker bonds as an interest of work law." Doing those proposals justice would take more space than I have here. But for me, the more interesting part of the piece is in the identifying of the problem and the asking of the question. I can certainly sympathize with the federal judge who is unwilling to formally recognize a cause of action for discrimination targeted at a coworker. But I also can't help thinking after reading Schoenbaum's article that there are good reasons for courts to explicitly recognize strengthening employee relationships as a legitimate goal of employment law. This is an idea I had pondered before, but this article made me return to the issue and think about it more carefully. What's more, I also can't help thinking that by simply recognizing the inherent value of workplace bonds, courts could gradually begin to reshape employment law so as to encourage the formation of these types of bonds.

Ultimately, *Toward a Law of Coworkers* made me revisit an issue I've thought about before and inspired me to think about approaches I had not fully considered before. The article serves as a reminder of how the sometimes unhelpful split between labor law and employment law can work to the disadvantage of employees. At the same time, the article reminds us that this need not always be the case.

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