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EMPLOYEE MISCONDUCT

Delaware court explores hostile environment based on national origin

by Michael P. Stafford

*The U.S. District Court for the District of Delaware recently considered whether an autoworker was subjected to a **hostile** work environment based on national origin harassment. Rejecting the employer's argument that the alleged conduct constituted sporadic isolated incidents, the court refused to dismiss the case and ordered that it proceed to trial. This case illustrates that although isolated remarks and banter won't lead to employer liability, you must consider the conduct as a whole and not view each incident as a discrete occurrence.*

Facts

Hispanic-American Dino Petrocelli was employed by DaimlerChrysler on its night shift, initially as a dockworker and later as a picker/packer. He sued the company, claiming that he was subjected to numerous instances of national origin harassment by coworkers. For example, he argued that his coworkers drew pictures of his face with a beard or sombrero saying "Me no speak English" or in a jail cell. Those types of pictures were drawn with markers in the bathrooms, on equipment, and on boxes. He also claims that notes and pictures were left in work areas "referring to burritos and tacos . . . and [containing] references to [him] wearing a bandana . . . being in gangs and calling [him] 'Esse.'"

Petrocelli claimed the harassment involved more than merely anonymous drawings and notes. Specifically, he claimed that he was called a "spic" by coworkers on numerous occasions along with

epithets such as "lazy Latino" and "mushroom picker." A supervisor also once commented to Petrocelli that he "thought you people practiced 'Santaria' or Voodoo or something like that."

The alleged harassment occurred principally between 2000 and Petrocelli's January 2002 dismissal. He sued DaimlerChrysler, alleging that he was fired, disciplined, and subjected to a **hostile** work environment in violation of Title VII of the Civil Rights Act of 1964 and Delaware law.

Court rejects employer's arguments

With respect to Petrocelli's **hostile** work environment claim, DaimlerChrysler argued that the discrimination he alleged wasn't pervasive and regular but rather a series of isolated incidents. Obviously, not every unpleasant workplace is a **hostile** environment, and courts recognize that the occasional vulgar banter, innuendo, or offensive utterances of coarse or boorish workers would be neither pervasive nor offensive enough to be actionable. To prevail on a **hostile** work environment claim, an individual must show that the harassment was severe and pervasive enough to create a **hostile** work environment. In deciding whether harassment is severe and pervasive enough, however, the focus isn't on the severity of the individual incidents viewed in isolation but rather on the overall scenario.

In this case, the district court rejected DaimlerChrysler's argument and found that the alleged discrimination was severe and pervasive enough to create a **hostile** work environment. It noted that the alleged conduct and statements had to be viewed as a whole and not in isolation. *Petrocelli v. DaimlerChrysler Corp.*, C.A. No. 04-943 (D. Del., Mar. 22, 2006).

Bottom line

To avoid or reduce your potential liability for **hostile** environment harassment, it's wise to continue educating your managers and employees to identify and eliminate conduct most likely to lead to those claims under federal and/or state law and to have written policies prohibiting harassment in the workplace. If an investigation shows that employees have engaged in unlawful harassment, take appropriate remedial action, which may include disciplining or firing the employees.

Find out more about harassment in the subscribers' area of www.HRhero.com, the website for Delaware Employment Law Letter. You have access to an HR Executive Special Report on the subject: "Workplace Harassment Trail Guide: Avoiding the Avalanche Zone." Just log in and scroll down to the link for all the Special Report titles. Lost your password? Call customer service at (800) 274-6774.

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