Labor & Employment | Alert

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Third Circuit 'Clarifies' that a Single Racial Slur May be Sufficiently 'Severe' to Create a Hostile Work Environment

Characterizing its own precedent as "inconsistent" and "confusing," the Third Circuit Court of Appeals, in a published opinion earlier this month, undertook to "clarify" the "correct standard" for establishing a hostile work environment claim under federal anti-discrimination law (in particular, Title VII). *Castleberry v. STI Group*, No. 16-3131. To state such a claim, plaintiffs must show that the harassment they experienced was either "severe" or "pervasive"—they need not plead or prove that it is both. Following *Castleberry*, employers in the Third Circuit may face greater challenges in defeating hostile work environment claims on summary judgment.

The plaintiffs in *Castleberry* were two African-American males hired as laborers through a subcontractor to work for Chesapeake Energy Corporation. Plaintiffs filed suit alleging harassment, discrimination, and retaliation in violation of federal law. Plaintiffs alleged that they observed racially insensitive comments on sign-in sheets "on several occasions," they were prohibited from working on certain projects because of their race, and that a supervisor once threatened plaintiff Castleberry and others stating that they would be fired if they "[n-----] rigged" a fence. The plaintiffs complained about their supervisor's use of this offensive racial epithet and were fired two weeks later. They were brought back to work shortly afterwards, but soon let go again due to "lack of work."

The District Court dismissed plaintiffs' Complaint, finding that the facts as alleged did not support a finding of "harassment" that was "pervasive and regular." Relying upon that reasoning, the court similarly dismissed plaintiffs' remaining discrimination and retaliation claims.

On appeal, the Third Circuit focused on and rejected the more limiting standard that the District Court applied in evaluating plaintiffs' hostile work environment claims. The court conceded that it had in the past misstated the standard—calling it "pervasive and regular"—or articulated the applicable standard inconsistently. "Thus, we clarify.

The correct standard is 'severe *or* pervasive.'" As the Third Circuit explained: "[S]ome harassment may be severe enough to contaminate an environment even if not pervasive; other, less objectionable, conduct will contaminate the workplace only if it is pervasive." (citations omitted). In reaching that result, the court noted that the U.S. Supreme Court has so held on several occasions.

After addressing the applicable legal standard, the court evaluated whether the one-time use of the highly offensive term about which plaintiffs complained could be considered sufficiently "severe" by itself to state a hostile work environment claim. The court concluded that while the answer to that question would be context specific, "it is clear that one such instance can suffice to state a claim."

The Third Circuit's holding is reminiscent of a pair of similar decisions from the Second Circuit Court of Appeals this past spring. See our prior *GT Alert* entitled, "Has the Second Circuit Lowered the Bar for Plaintiffs to Advance a Hostile Work Environment Claim Under Title VII?"

These decisions collectively re-emphasize to employers the importance of effective anti-harassment training, and the need to caution all employees, particularly management, to refrain from the use of offensive speech related to any legally protected characteristic under law. The Third Circuit has now made clear that uttering a highly offensive remark—even just one time—might be deemed enough to create a claim of hostile work environment.

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