New Jersey Supreme Court Reaffirms its Views on Workplace Harassment

Client Advisories

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In a long awaited ruling, the New Jersey Supreme Court reversed an Appellate Division decision, which had dismissed a police officer's claim regarding comments about his Jewish ancestry and faith. In doing so, the Court reinstated and affirmed that derogatory comments based on religion can create a hostile work environment, even if the employee participated in some of the culture at the workplace.

Cutler v. Dorn involved a claim by a long time police officer that he had been subjected to several incidents of epithets, derogatory comments, and harassing treatment that impugned his Jewish heritage and faith. The management of the police department defended the claim, contending that the alleged remarks and behavior were simply part of a culture of "humor" in the police department, in which the plaintiff was a willing participant.

At trial, a jury found that plaintiff had been subjected to a hostile work environment, but awarded no damages. But the police department would face an award of counsel fees against it based on plaintiff's prevailing on the claim. To avoid this, the police department appealed. The Appellate Division in 2007 reversed the trial court, concluding that the comments and behavior of which the plaintiff complained were too sporadic and not sufficiently severe or pervasive to support a hostile work environment claim.

On Friday, however, the Supreme Court disagreed and reinstated the verdict, finding that the evidence was sufficient to support the jury's decision that a hostile work environment had been created. In reaching its decision, the Court concluded that the cumulative effect of the repeated incidents proved by plaintiff, punctuated by religious and ethnic stereotyping and disparagement, could be found to have been objectively humiliating and hostile to a reasonable person of Jewish ancestry. Significantly, the Court reinforced that claims for religious-based workplace harassment should not be analyzed on any different standard than claims based on gender, race or any other protected classification. The Court also rejected the police department's effort to characterize the incidents as mere humor or "ribbing," finding instead that the complained-of behaviors had become part of the normal give and take of the daily workplace, thus infecting the workplace with a pervasive anti-Jewish sentiment.

Cutler v. Dorn does not change the prevailing law on workplace harassment, but will enhance lower court sensitivity to these claims, with the probable effect that courts will be less likely to decide as a matter of law that conduct is not severe or pervasive enough to support a claim of workplace harassment. This could lead to more jury trials on these issues. The decision also demonstrates that these claims can succeed even against a backdrop of so called "good natured" teasing, including circumstances where the complaining employee may have been a willing participant in some of the activity. Employers need to reinforce with their supervisors and staff that teasing and joking based on protected characteristics is not acceptable behavior in the workplace and should take appropriate steps to curb that behavior when it is seen or reported. Do not wait until a Mr. Cutler shows up with a claim of hostile work environment. By then, it may be too late to avoid liability.

If you have any questions about this decision, or how it may impact your business, please contact Gary J. Lesneski, Esquire, or Peter L. Frattarelli, Esquire, of Archer's Labor and Employment Department at 856-795-2121.

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