



CVS Accused of Engaging in Unlawful Discriminatory Practices

June 5, 2015

Over the past year, an exceptional number of retailers have been accused by customers of employing discriminatory practices in violation of both federal and state law. For example, just last year, luxury department store, Barneys' shelled out \$525,000 to settle a racial profiling lawsuit instituted by its customers. Shortly thereafter, Macy's found itself in a similar situation, agreeing to pay \$650,000 to settle like claims. Now, in a somewhat unconventional case, CVS is also facing a discrimination class-action lawsuit recently filed by former corporate insiders of the chain on behalf of CVS customers.

More specifically, on Wednesday, June 3, four former CVS Market Investigators, employees who are responsible for investigating and preventing customer theft, filed a class-action lawsuit in federal court in the Southern District of New York charging the drug store with intentionally targeting and racially profiling "its Black and Hispanic shoppers based on the highly offensive, discriminatory and ill-founded institutional belief that these minority customers are criminals and thieves." Within their complaint, the plaintiffs included a multitude of discriminatory statements and demands uttered by their supervisors, such as: "watch the Black and Hispanic people catch more cases" and "You have to catch more thieves. You know how these young Black guys are." According to plaintiffs, the supervisors made such demands without any "indication [that] the black shopper was going to steal anything." Additionally, CVS allegedly did not require the same inspection for its white shoppers.

Heightening the already tense situation, all four plaintiffs allege that CVS had also subjected them to unlawful racial discrimination. According to the complaint, after getting into an argument with a store manager, plaintiff Keith Pollack's supervisor demanded that he "get his black ass back to the store and apologize." Another store manager instructed plaintiff Delbert Sorhaindo to "hide like a monkey" so that potential shoplifters would not notice him. Plaintiffs claim that because of this, they, and other class members, have been "subjected to a hostile work environment that consisted not only of being directed to discriminate but also included racist and discriminatory comments and conduct directed to them and others."

Plaintiffs further contend that although they had complained about these discriminatory practices both to Human Resources and to the person in charge of running the Market Investigator unit in New York City, these complaints "went virtually unanswered" and "no real investigation was ever conducted" nor was any remedial action ever taken. As a result of being "forced to work in such an incredibly discriminatory environment," two of the plaintiffs allege that they were constructively discharged, while another alleges that she was retaliated against when CVS terminated her after receiving her complaint.

Consequently, plaintiffs filed suit and brought individual and class claims against CVS for unlawful discriminatory and retaliatory employment practices under Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981; the New York State Human Rights Law, New York Executive Law §§ 290 *et Esq*; and the New York City Human Rights Law, N.Y.C. Administrative Code §§ 8-107 *et Esq*.

In response, a spokesperson for CVS stated that she was shocked by these allegations and commented that CVS does not tolerate discriminatory policies or practices. “CVS Health has firm nondiscrimination policies that it rigorously enforces. We serve all communities and we do not tolerate any policy or practice that discriminates against any group. We are shocked by the allegations in this complaint and we intend to defend against them vigorously” stated the spokesperson.

Employers should pay close attention to this case, as it has the ability to have significant practical as well as legal implications. For example, depending on which way the federal court rules, employers may need to review, and if necessary, revise their interview procedures and provide additional training to store managers.

If you or your institution has any questions or concerns regarding employment related issues, please contact Hayley B. Dryer at hdryer@cullenanddykman.com or at 516-357-3745.

A special thanks to Ashley Zangara, a law clerk at Cullen and Dykman, for helping with this post.