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A Single Racist Comment May Establish a Title VII Violation

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In April 2017, the United States Court of Appeals for the Second Circuit held that a single racist comment can, when severe enough, establish a discriminatory hostile work environment.

Otis Daniel, a 35-year-old African American male, began working for TandM Protection Resources, Inc. in 2010. Daniel worked as a fire safety director for TandM for approximately fifteen months. In June 2013, Daniel filed a complaint claiming he was subjected to persistent discrimination due to his race, sexuality and national origin. Daniel specifically cited one incident where his supervisor called him the "n-word".

The claim was first dismissed after the District Court granted TandM's motion for summary judgment. The District Court found that one racial slur was not sufficient to establish a hostile work environment. Discrimination amounts to a hostile work environment when discrimination is pervasive or severe. However, the District Court reasoned that the supervisor's use of one racial slur did not establish a severe *and* pervasive hostile environment.

The Court of Appeals reversed the finding and found that the District Court erred in granting summary judgment in this case. The Court reasoned that the one-time use of a "severe racial slur" could be enough to prove a hostile work environment. Interestingly, the Court of Appeals relied on prior dicta which stated: "perhaps no single act can more quickly alter the conditions of employment and create an abusive working environment than the use of an unambiguously racial epithet such as the n-word by a supervisor in the presence of his subordinates." Here, the supervisor used the "n-word" to his subordinate Otis Daniel. This one time use of the "n-word" in this manner amounted to a severe racial slur.

The Equal Employment Opportunity Commission (EEOC) also filed a brief, supporting the claim that the singular use of the racial slur by Daniel's supervisor was in and of itself enough to allow his Title VII lawsuit to survive summary judgment. Further, the EEOC stated that the District Court erred by imposing too strict a standard for proving severe or pervasive harassment.

The Court of Appeals further found that the District Court also erred by failing to take into consideration facially neutral incidents that may have acted as support for Daniel's claim. For example, the supervisor repeatedly watched Daniel and asked him whether or not he had stolen a computer. These facially neutral incidents, coupled with the racist slur, provide more support for Daniel's claim.

The Court of Appeals opinion confirms that a hostile work environment can exist when conduct is, although brief, severe or when conduct is pervasive. Further, this decision supports the importance of evaluating the totality of evidence in reference to Title VII claims. Although lawsuits of this nature may not be entirely unavoidable, employers can protect themselves by documenting and implementing strong policies denouncing workplace discrimination and harassment. Furthermore, employers should make all efforts to appropriately react quickly to discrimination claims by investigating same fully and completely.

If you have any questions or concerns regarding employment related issues, please contact James G. Ryan at jryan@cullenanddykman.com or at 516-357-3750.

Thank you to Victoria Jaus, a law clerk at Cullen and Dykman, for her assistance with this blog post.

*Please note that this is a general description of law and does not constitute legal advice.