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Rhode Island Federal District Court Rejects Hostile Work Environment and Unlawful Discharge Claims

In a recent decision, the Federal District Court for Rhode Island dismissed a claim of gender and national origin discrimination. (*Bahmany v. Women & Infants Hospital* No. 10-120M). The plaintiff, a social worker at a local hospital, was terminated in 2008. The employer alleged that her termination was because she had struck a co-worker in violation of its workplace violence policy. The plaintiff denied striking the co-worker and alleged that she was terminated due to her national origin and because she had complained about harassment at work. The harassment alleged consisted of the co-worker that she allegedly struck telling her to "shut up" in her native language on multiple occasions, playing various practical jokes on her and calling her a "dictator" which she viewed as offensive because she was from Iran. The employer's defense was that the termination was the result of the plaintiff's violation of policy and that her work environment was not "hostile" under the law.

As to the claim of national origin discrimination, the court noted that the employer had terminated other employees for violating the workplace violence policy and there was evidence that the plaintiff had violated the policy. The court concluded that since there was no evidence, that the plaintiff was treated any different than other employees, her claim failed. The court also reasoned that it was not its role to second guess the employer's business decision.

As to the claim that the plaintiff had been subjected to a hostile work environment, the court focused on the nature of events alleged. The court noted that incidents alleged, even if they occurred did not amount to a hostile work environment. The court reasoned that while the behavior may have been offensive to the plaintiff it did not rise to the level of "severe and pervasive" necessary under the law to constitute a hostile work environment. Finally, the claim of retaliation was rejected because her earlier complaints about the co-worker were not shown to be related to the decision to terminate her employment.

Court Recognizes Age Harassment Claim

On September 12, 2011 the Fifth Circuit Court of Appeals ruled that a 65-year-old car salesman who claimed that his manager subjected him to persistent abusive remarks about his age had a viable harassment claim under the Age Discrimination in Employment Act. (*Dediol v. Best Chevrolet*, No. 10-30767, 9/12/11). The plaintiff alleged that while working at the dealership for three month, his supervisor repeatedly referred to him as "old man," "pops" and "old mother" and directed potential sales to other sales representatives. The plaintiff alleged that his employment ended when his supervisor allegedly threatened to beat him up.

The Fifth Circuit Court of Appeals ruled that the plaintiff had alleged a claim that could proceed to trial because the protections of the ADEA extended to claims of a hostile work environment related to age. Reviewing the facts alleged, in particular the frequency of the harassment and the threat of physical violence, the plaintiff's facts, if proven at trial, would constitute a hostile work environment. Unlike the facts in the recent Rhode Island case, the events alleged were so frequent and offensive as to constitute a hostile work environment. The court placed particular weight on the claim that the plaintiff had been threatened with physical assault.

EEOC Identifies Credit Checks as an "Emerging Issue"

At a recent conference held by the EEOC Training Institute, the growing use of credit checks in hiring was identified as an issue of concern. The EEOC views the use of credit checks as potentially discriminatory because statistically credit checks negatively impact more minority job candidates than white candidates. The concern is that the use of credit checks is frequently not tied to duties of a particular position and effectively excludes a greater percentage of minority candidates. Employers using credit checks as part of the hiring process should carefully review the duties of a position and determine if a credit check is in fact relevant to the job. For positions where an employee may have access to money, a credit check may have relevance, but for most jobs it is difficult to justify the use of a credit check.