

THE EMPLOYER'S LEGAL RESOURCE: RACIAL SLURS IN THE WORKPLACE – SEVERE OR PERVASIVE; IT DOESN'T HAVE TO BE BOTH

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If you live in Oklahoma, you are probably familiar with the University of Oklahoma incident where men at the Sigma Alpha Epsilon (SAE) fraternity were filmed on a party bus singing a racist chant. It made national news and was the subject of conversation for quite some time. Some of your workplaces may even have had conversations about the events. Southwest Aviation has been sued over a conversation that took place at its workplace that started out about the SAE incident but then strayed into a supervisor's personal observations.

According to court records, during a weekly meeting with one supervisor and several employees, the SAE incident was raised. The plaintiff in the case was the only African American employee present.

At some point in the conversation, the supervisor spoke up. There is a dispute as to his exact words. Plaintiff testified the supervisor said, "pardon me, but a lot of my friends are niggers and some of them are not niggers." Plaintiff said this was directed to him and said in a derogatory way.

The supervisor testified that he actually said, "I was raised on the north side of Tulsa and some of my best friends were black and I can tell you from experience that the word nigger has nothing to do with a person's skin color." The supervisor testified he was not directing the remark to the Plaintiff but to the entire group as part of the overall conversation.

Plaintiff was offended, clear with others about how upset he was with the supervisor's comments. In fact, two other co-workers "more or less" apologized to Plaintiff on the supervisor's behalf for the comments, understanding Plaintiff was upset.

Plaintiff sued claiming the supervisor's comments created a racially hostile working environment. Southwest Aviation moved for summary judgment, arguing that one event is insufficient to allow the matter to be tried to a jury. The judge disagreed. In finding there were enough facts alleged to allow this case to proceed to a jury for decision, the judge restated the law and then highlighted some facts.

Plaintiff is a member of a protected class who alleged harassment based upon his race. That harassment had to alter a term or condition of his employment and create an abusive working environment due to the harassment's "severity or pervasiveness." The Court discussed that even one event, if severe enough, would satisfy this test.

The Court wrote:

First, the comment, as described by Plaintiff, involved use of the word "nigger," which courts have deemed "polluting" and "pure anathema." ... (observing that "perhaps no single act can more quickly alter the conditions of employment" than "the use of an unambiguously racial epithet such as 'nigger' by a supervisor"). Second, the comment was made by Plaintiff's direct supervisor, an individual with control over the terms and conditions of Plaintiff's employment. A reasonable jury could conclude that [the supervisor's] reference to some people being "niggers," even one time, created a racially hostile environment in which Plaintiff had to work.

This case will head to trial to allow a jury to determine the outcome.

What can employers learn from this? So many things. This should be a reminder to all employers that management is held to a higher standard. Train your supervisors about their obligations in the workplace.

One event can subject an employer to liability under the employment discrimination laws. Additionally, discussing issues like the SAE incident (or other topics on the tickers streaming along the bottom of various 24-hour cable news channels) during working hours may not be the best use of work time. Management should be vigilant in ensuring that conversations at work do not stray into areas that can subject the employer to liability.

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