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HARASSMENT IN THE WORKPLACE

Employers know that harassment based on an employee's protected class violates employment discrimination laws. Likewise, harassment that is not based on an employee's protected class, though morally objectionable, is not a violation of employment discrimination laws. But drawing the line on whether the harassment was or was not based on an employee's protected class is not easily done. Employers are well advised to intervene to stop all harassment, as a recent Second Circuit decision shows.

In *Ramsy v. Mariott*, a banquet server, who described himself as Egyptian and a devout Coptic Christian, told a human resources representative that his co-workers were cheating on their time sheets. According to the plaintiff, the human resources representative did not respond well to his report. Rather, the representative bitterly complained that as a result of the employee's report, he would have to prepare and forward numerous documents to corporate headquarters.

Not only was the human resources representative irritated over the employee's report of theft of time, not surprisingly, the employee's co-workers did not respond well when they learned of it. They retaliated. One co-worker, a union delegate, made numerous derogatory comments about the employee. He called the employee a "f..king Egyptian rat," a "f..king mummy" and would frequently call out: "where is my f..king mummy." He ridiculed the employee's religion saying that it was garbage and that only stupid people believed in God. The union delegate called the employee a "pretentious Christian" and told a group of guests in the banquet hall that the employee was part of a cult that did not drink but married their sisters. Other co-workers would call the employee a camel or a gypsy or repeat the offensive names used by the union delegate. According to the employee, he was regularly insulted and mocked.

The employee complained to human resources. Although the employer investigated his allegations of theft of time, it did no investigation of his complaints of harassment. The employee's complaints to his supervisor were similarly ignored.

The employee claimed that harassment continued for several years and he was chronically nervous. He sought help from a psychiatrist, who prescribed anti-anxiety medication. He also claimed that he cried regularly because of his co-workers' conduct.

One day when the employee was working with a co-worker, who he claims was one of his tormentors, they got into a confrontation. Both were fired. The employee sued for religious and national origin harassment.

The employer argued, in part, that a number of the comments alleged to be discriminatory based on the employee's religion were not expressly discriminatory or not directed at him. The Second Circuit rejected that argument and held that when individuals engage in harassment, some of which is explicitly based on a protected

class and some of which is not, “the entire course of conduct is relevant to a hostile working environment claim.” Negative comments about an employee’s protected class, even though not directed at the employee, are relevant in determining whether the conduct was severe or pervasive.

The employer also argued that the employee was targeted not because of his protected class, either his religion or national origin, but because he reported his co-workers for theft of time. The Second Circuit held that whether the hostile working environment was motivated by his protected class or his reporting of wage theft was a question to be decided by a jury.

Too often a workplace dispute escalates and employees resort to angry words targeted at another employee’s protected class, whether it is the other employee’s sex, gender, religion, age or national origin. *Ramsy v. Mariott* teaches that the employer must intervene even in cases where it is clear that hostile conduct was triggered by a workplace dispute. Failure to do so, as the case shows, can result in costly litigation.

If you have any questions about this or any other employment issue, please feel free to contact **Bernard E. Jacques** at bjacques@mdmc-law.com.

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