

ALERT

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Third Circuit Clarifies Standard Allowing Single Incidents to Establish Claims for Hostile Work Environment

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On July 14, 2017, a three-judge panel of the United States Court of Appeals for the Third Circuit (“Third Circuit” or the “Court”) unanimously decided in Castleberry v. STI Grp., 863 F.3d 259 (3d Cir. 2017) (referred to hereinafter as “Castleberry”), that a single workplace incident, such as the utterance of an offensive epithet or slur, can provide the basis for establishing a claim for hostile work environment pursuant to 42 U.S.C. § 1981 (“Section 1981”) and Title VII of the Civil Rights Act of 1964 (“CRA”). The Castleberry decision clarifies decades of confusion in the courts over the appropriate standard applicable in hostile environment cases and finds that “severe or pervasive”, rather than “severe and pervasive” or “pervasive and regular”, is the correct standard to be applied. See Castleberry at *6. The decision has the potential to cause an increase in hostile work environment claims generally and/or an increase the number of these claims that succeed in making it to trial.

Section 1981 and the CRA act to protect the rights of all employees in the United States, and penalize unlawful acts of discrimination in the workplace. See 42 U.S.C. § 1981; 42 U.S.C.S. § 2000 et seq. Section 1981 provides, in relevant part, that “[a]ll persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws[.]” *Id.* Correspondingly, the CRA makes it unlawful for an employer, based on an individual’s race, color, religion, sex, or national origin, “to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment” or “to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee”. 42 U.S.C.S. § 2000e-2(a)(1)-(2).

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The Castleberry decision arises out of an incident involving two African-American males (“Plaintiffs”) who were hired by the STI Group (“STI”), a staffing-placement agency, as general laborers for the Chesapeake Energy Corporation (“Chesapeake”), an oil and natural gas company. Shortly after Plaintiffs were hired, the only other African-American male on the crew was fired. Additionally, Plaintiffs alleged that (1) when they arrived at work, on numerous occasions, someone had anonymously written “don’t be black on the right of way” on the sign-in sheets; (2) although they had more experience working on pipelines than their non-African-American coworkers, they were only permitted to engaged in menial work such as cleaning around the pipelines rather than working on them; and, (3) in the midst of working on a fence-removal project and in the presence of several coworkers, their supervisor stated that if they had “nigger-rigged” the fence, they would be fired. Plaintiffs reported the offensive language and were fired two weeks later without explanation. They were rehired shortly thereafter, but terminated again for “lack of work.” Castleberry at *1-3.

Consequently, Plaintiffs filed suit in District Court, alleging harassment, discrimination, and retaliation under Section 1981. The District Court dismissed Plaintiff’s case, finding that the alleged harassment was not “pervasive and regular,” that there were not sufficient facts demonstrating that Plaintiffs’ firing was racially motivated, and, as it concerned their claim for retaliation, that Plaintiffs failed to demonstrate that an objectively reasonable person would have believed that the supervisor’s comment was unlawful. The Third Circuit reversed, finding Plaintiffs’ harassment and retaliation claims plausible and that the district court incorrectly “jettisoned” the burden-shifting formula announced in McDonnell Douglas Corp. v Green, 411 U.S. 792 (1973). Id. at *13. Thus, the Court announced the correct standard for evaluating harassment is “severe or pervasive”, further explaining that a single instance can suffice to make out a claim of unlawful discrimination. Id. at *7.

Contemporarily, the employment regulatory environment is especially complex and ripe for violations. Employers are therefore encouraged to heighten and focus their compliance and oversight efforts to adjust to this most recent clarification regarding potential liability. For more information on the Section 1981 and the CRA, the impact of the Castleberry decision, and compliance issues or concerns, please feel free to contact any member of the firm’s Labor & Employment Law Practice Group for further discussion.

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