

Supreme Court Reverses Controversial Appellate Division Case Regarding Harassment in the Workplace

In the case of *Cutler v. Dorn*, the New Jersey Supreme Court held that the standard for demonstrating a hostile workplace environment in religion-based claims is the same as in sexually-based or racially-based claims. The Court reinstated a jury verdict finding that Jason Cutler, a police officer of Jewish faith, was subjected to a hostile workplace environment, where Cutler's superior officers and colleagues referred to Cutler, and Jewish people in general, in derogatory terms. In a controversial decision, the Appellate Division previously found that the comments were not severe or pervasive enough to constitute a hostile work environment. The Supreme Court disagreed.

Background Facts

Cutler began working as a police officer for the Haddonfield Police Department in 1995. Cutler's Jewish faith and ancestry were known to the department, yet his superiors and peers would often make "jokes" about "Jews" while in his presence. For example, the then-Chief of Police referred to Cutler as "the Jew" and even asked Cutler "where [his] big Jew...nose was." Similarly, while conversing with Cutler, a Lieutenant intentionally mentioned various stereotypes about Jewish people such as being "good with numbers" and making "all the money." Cutler was also asked not to wear his yarmulke during Passover, while the other non-Jewish officers were allowed to outwardly express their religion without consequence. On one occasion, an Israeli flag sticker was placed on Cutler's locker, and a few weeks later a German flag sticker was placed over it. The "straw that broke the camel's back" occurred in 1999 when a fellow patrolman exclaimed, "those dirty Jews," or words to that effect, in response to Cutler's explanation of the Maccabi Games, a Jewish Olympics-type event.

Based upon the above conduct and statements, Cutler filed an action under New Jersey's Law Against Discrimination (LAD) against the Borough of Haddonfield, and two individual defendants, alleging that he was subjected to a hostile work environment based on his Jewish religion and ancestry. The case was tried and the jury found that Cutler did suffer a hostile work environment "based on his religion or ancestry." Interestingly, however, the jury awarded Cutler zero damages.

The Appellate Division Opinion

Both parties appealed the jury verdict. In an unanimous decision, the Appellate Division reversed the trial court's decision denying the Borough of Haddonfield's motion to dismiss the verdict. The Appellate Division found Cutler's claims to be based on an isolated comment by a co-worker. The other comments and conduct presented at trial were part of something that Cutler participated in himself. The Appellate Division felt that the "totality of the circumstances" indicated that other remarks occurred in a context of good-natured pranks and joking, in which Cutler admitted to participating in from time to time. Accordingly, the Appellate Division reversed the jury verdict, holding that the alleged harassment was merely sporadic and not pervasive enough to create a hostile work environment.

The Supreme Court's Decision

In reversing the Appellate Division, the Supreme Court of New Jersey held that the threshold for proving a hostile workplace environment is no more stringent in an action alleging religious harassment than in an action alleging sexual or racial harassment. The Court disagreed with the Appellate Division that the anti-Semitic remarks and incidents involved in the case were not objectively hostile. The Supreme Court determined that a person of Jewish faith would be justified in feeling that the workplace had been altered by the pervading sense of anti-Semitism amongst several members of the Haddonfield Police Department. The Court rejected Haddonfield's argument that the actions were excusable because they were mere "ribbing" and a part of the police department's "humor file,"



which contained insensitive drawings of public figures and persons in the department. The Court opined that the conduct at issue was completely separate from the jokes contained in the “humor file” and clearly rose to a level above “ribbing” or teasing. The Court declared, “[e]ven in a work setting in which derogatory humor was a norm, the ‘humor file’ defense fails to be dispositive of Cutler’s claim of hostile work environment.”

Conclusion

The Supreme Court’s decision makes it clear that “humor” or “joking” is not an absolute defense in a hostile work environment claim. When “ribbing” is reasonably likely to cause an employee to feel that the workplace has changed, or that they may be at a disadvantage based on the sentiments pervading the working environment, then the workplace may be “hostile.” While the Appellate Division considered Cutler’s joking with his co-workers and superiors in reversing the jury verdict, the Supreme Court gave less weight to this factor proving, once again, that in New Jersey discrimination in the workplace, whether racially, sexually, or religiously charged, is not tolerated. Employers should act accordingly by monitoring workplace behavior, even if the behavior is joking amongst co-workers, and enforcing appropriate policies prohibiting discrimination and harassment.

If you have any questions about this Alert or any other labor & employment law concerns, please contact Pat Collins, David Cassidy or any member of our Labor & Employment Law Group.

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