

Managers' comments about Judaism not enough to create hostile work environment

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Last year, we reported on a case in which an employee accused her former employer of creating a hostile work environment and treating her in a disparate manner based on her faith (Judaism) and then retaliating against her for filing a charge of discrimination with the Equal Employment Opportunity Commission (EEOC). (See "Arizona employee's claims for alleged religious hostility advance" on pg. 1 of our April 2015 issue.)

You'll remember that Title VII of the Civil Rights Act of 1964 prohibits employers from creating a hostile work environment, which, in essence, is ongoing unwelcome verbal or physical harassment based on any protected characteristic, including religion. Title VII also protects employees from retaliation in response to actions they take to protect their Title VII rights. This case is a great example of a situation in which comments by a supervisor based on religion didn't amount to a hostile work environment but were still very costly to the employer in the long run.

A brief reminder of the facts

Marcy Rich began working for Arizona Regional Multiple Listing Service, Inc. (ARMLS), as a training and support specialist in 2002. Rich, who is Jewish, sued ARMLS, alleging that her managers created a work environment that was hostile to Jewish employees.

In support of her hostile work environment claim, Rich alleged that her supervisor, Barbara Hoffman, who identifies herself as a "born again" Christian, told her that she was "dead" because she didn't "reveal Jesus" to herself. Hoffman also put crosses on invitations to a mandatory company holiday

party and hired carolers "who sang songs with heavy Christian lyrics, including Christ our Lord."

According to Rich, the chief operating officer (COO) told her that he "did not agree" with her choice of cubicle decorations (family Hanukkah greeting cards and cutouts of a dreidel and a menorah) when she took part in an annual office decorating activity. She claimed that the COO told her that he thought she would have conflict with other employees because of her religion.

Rich alleged disparate treatment when ARMLS denied her several promotions and requests for a job change while creating new positions for non-Jewish individuals. She also alleged that Hoffman exhibited religious hostility toward her, so she asked to be allowed to change supervisors. Her request was denied, even though, according to her, non-Jewish employees were permitted to change supervisors.

While the allegations in Rich's complaint were sufficient to survive a motion for dismissal, they weren't enough to survive ARMLS's request that the court enter judgment in its favor on her disparate treatment, hostile work environment, and retaliation claims. In granting the company's request, the court found that although the comments and actions Rich cited "were objectively offensive expressions of intolerance toward non-Christian religions, [and] Judaism in particular," the supervisors' words and actions were "neither severe nor pervasive enough to establish" a claim for hostile work environment.

A closer look

To establish a hostile work environment claim, Rich needed to show that (1) she was subjected to verbal or physical conduct of a harassing nature, (2) the conduct was unwelcome, and (3) the conduct was

sufficiently severe or pervasive to alter the conditions of her employment and create an abusive working environment. A court looks at all the evidence when considering whether allegedly abusive conduct has the cumulative effect of severe or pervasive harassment. The complained-of conduct or comments must be both objectively offensive (i.e., a reasonable person would find it hostile) and subjectively offensive (i.e., the victim perceives it as hostile).

The company asserted that Rich failed to provide evidence of the abusive workplace conditions required for a hostile work environment claim and noted that her complaint involved only "the brief period comprising the 2011 holiday season." She had presented no evidence indicating that the nature of her work environment had unreasonably interfered with her performance as an employee, ARMLS argued. The court agreed and dismissed her case.

Lessons learned

While the U.S. Supreme Court has often stated that Title VII doesn't set forth a "general civility code," this case is a great reminder that civility in the workplace, if not more, should be your goal for a number of reasons. First, while ARMLS ultimately prevailed against Rich's claims, the company no doubt incurred losses in the form of reduced productivity, damaged morale, and litigation costs, all of which could have been avoided had supervisors refrained from commenting on Rich's religion.

Second, regular antiharassment and antidiscrimination training provides management and staff alike with necessary reminders about proper behavior and appropriate responses when someone witnesses or is subjected to inappropriate comments or conduct. Your annual harassment training should include references to all protected categories and not focus only on sexual harassment.

Finally, it's important to investigate and address internal complaints in accordance with your company's antiharassment and antidiscrimination policies and take appropriate corrective action in

response to inappropriate comments or conduct. Avoiding inappropriate comments or conduct and addressing such behavior when it occurs will likely improve morale and decrease turnover that would likely result if offensive conduct goes uncorrected.

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