What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR

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Has the Fourth Circuit Adopted a Two Racial-Slurs Rule?

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Under federal law, use of racial epithets must either be severe or pervasive in order for an employee to assert a claim for a hostile work environment. In March of 2013, a federal appellate court in Washington, DC held that a single use of the "N-word" was enough to establish a hostile work environment because it is a racial epithet that is "deeply offensive." That Court stated that "perhaps no single act can more quickly alter the conditions of employment" than "the use of an unambiguously racial epithet . . . by a supervisor."

On May 13, 2014, the United States Court of Appeals for the Fourth Circuit, which includes cases from North Carolina, addressed a similar issue but reached a different result. This federal appellate court established that an employee's description of the plaintiff as a "porch monkey" on two occasions did not constitute a hostile work environment. Though the Court declared the supervisor's use of the term 'porch monkey' was "indeed racially derogatory and highly offensive, and nothing we say or hold condones it," the Court nevertheless ruled that use of the term "twice in a period of two days in discussions about a single incident was not, as a matter of law, so severe or pervasive . . . so as to be legally discriminatory."

So how do we reconcile these two rulings?

When is a crude and offensive remark severe enough by itself to constitute a hostile work environment? In comparison, there doesn't appear to be any federal decision holding there is a sexually harassing word as offensive as the "N-word," such that one utterance of the word is sufficient to state a claim for a hostile work environment. It may be that when it comes to race and gender cases, the federal courts simply have varying tolerance levels for what constitutes crude, offensive, or severe behavior at the workplace.

The takeaway for employers is that it is never appropriate to condone comments in the workplace that are crude or offensive, and employers should have zero tolerance for racially or sexually offensive comments. Even if a single incident is not enough to create a winning lawsuit, it may nevertheless be enough to create a lawsuit that employers will

need to spend valuable time, money and resources defending.

If you have questions or thoughts about this court opinion or other employment law issues, please contact Connie Carrigan at ccarrigan@smithdebnamlaw.com.

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