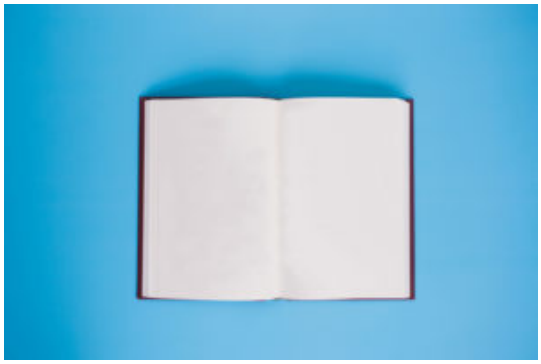
Ex-Employee's Lawsuit Demonstrates That Some People Sue Over Absolutely Nothing

by Dennis J. Merley - Tuesday, March 26, 2019



Employers often complain that they feel at risk of being sued even if they have done absolutely nothing wrong. Unfortunately, a recent Minnesota case seems to support their lament.

Everett Bad Wound worked for the Bureau of Indian Education (BIE), a division of the US Department of the Interior, from 1999 until late 2016 when he was terminated after he failed to report a car accident that caused his driver's license to be revoked. The BIE determined that this prevented him from performing many of his job duties and they therefore terminated his employment.

Claims Were a Blank Page

Bad Wound filed a discrimination charge with the Equal Employment Opportunity Commission (EEOC). After the EEOC ruled in BIE's favor, Bad Wound initiated a lawsuit in Minnesota Federal District Court alleging harassment on the basis of sex and sexual orientation, retaliation and age discrimination. His specific allegations were:

– On one undetermined occasion, his supervisor said he looked "all dolled up";

– In October, 2016, his supervisor's assistant referred to him as a "girl scout."

– After filing an internal complaint with the Human Resources Department and later speaking with an EEOC Investigator (without actually filing a charge) his supervisors ignored him, impeded his work and subjected him to a hostile work environment.

BIE filed a motion to dismiss the lawsuit for failure to state a claim upon which relief can be granted. This is a difficult standard to meet since legal complaints require only a short plain statement indicating, after all factual allegations are considered to be true, that the complainant is entitled to relief.

Notwithstanding the elevated standard, United States District Court Judge Wilhelmina Wright wasted no time dismissing the lawsuit, noting first that an actionable harassment claim requires behavior that is "both objectively and subjectively offensive, such that a reasonable person would consider it to be hostile or abusive." Behavior that constitutes "[s]imple teasing, offhand comments, and isolated incidents (unless extremely serious)" are insufficient" to meet this standard.

Nothing + Nothing = Nothing

Judge Wright concluded that while the two comments at issue may have been subjectively offensive to Bad Wound, they clearly were the type of isolated and offhand remarks that simply do not rise to the level of actionable harassment under Title VII. The remaining allegations of harassment were merely conclusory with no evidence of actual events to support them. She therefore dismissed the harassment claims.

As for retaliation, Judge Wright observed that Bad Wound was not terminated for almost seven months after filing his internal complaint with the Human Resources Department. Without any other evidence linking the termination decision to the complaint, the passage of this much time rendered a connection between these two events implausible.

Finally, Judge Wright dismissed the age discrimination claim because Bad Wound had no evidence whatsoever of an age-based motive other than the fact that he is 62 and was terminated.

Bottom Line

When employees are convinced that they are subject to bias, they often view every statement and every interaction through that filter. In this case, all it took for the employee to conclude that he needed to sue was two relatively innocuous statements.

While it is certainly desirable to avoid any comments of the type made in this case, it is simply impossible to envision a busy work environment without the occasional slight or incivility. To think that a lawsuit can be brought as a result can be frustrating to employers, although comfort can be taken in the fact that Judge Wright did not allow this claim to move past the filing stage. Hopefully, this decision will influence other judges to do the same when called upon.