

Employment Law

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Dunkley v. S. Coraluzzo Petroleum Transporter: How to Appropriately Combat a Hostile Work Environment

By Okechi C. Ogbuokiri, Esq.

Investigating and remediating allegations of a hostile work environment, discrimination, or harassment within the workplace can be daunting and intimidating. However, the New Jersey Appellate Division recently published a favorable opinion for employers that outlines a systematic approach to prevent disgruntled employees from successfully pursuing such claims. In *Dunkley v. S. Coraluzzo Petroleum Transporter*, 437 N.J. Super. 366 (App. Div. 2014), the court found that a company could not be vicariously liable for an employee's racially charged comments because it (1) maintained well-defined anti-discrimination/harassment policies and complaint procedures; (2) distributed and trained its employees on such policies; and (3) documented its use and implementation of the same.

The Facts

Plaintiff Brian Dunkley began his employment with S. Coraluzzo Petroleum Transporter as an oil delivery driver on May 4, 2010. At the beginning of his employment, Coraluzzo provided Dunkley with an employee handbook and required Dunkley to complete a two-day in-class training and a two-week on-road on the job training. During his two-day training,

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representatives of Coraluzzo discussed the anti-harassment and anti-discrimination policy and related complaint procedures. During his on-road training Dunkley claimed that Richard Harrington, another driver assigned to provide him with training, directed race-related comments toward Dunkley, an African-American. For example, Dunkley alleged that Harrington made references to, amongst other things, the Ku Klux Klan, a motorcycle gang in which Harrington's family was involved that "[took] care of" his problems, and African-American women abusing public assistance programs. Dunkley stopped reporting to work and subsequently met with management and recounted Harrington's conduct, which was the reason for his absence.

In response to Dunkley's complaint, management assigned him to a new trainer. Upon his return to work, Dunkley never saw Harrington again and no longer experienced any racially discriminatory treatment from any other employee. Despite Coraluzzo's response to Dunkley's complaint, he alleged that he endured negative consequences after reporting Harrington's conduct, which caused his constructive discharge. Dunkley insisted that his complaint was not kept confidential as he felt ostracized by his co-workers. In addition, Dunkley alleged that he was uncomfortable at work, as he felt "threatened" because he was not sure whether Harrington's alleged affiliations with the Klan and a motorcycle gang were true. Dunkley stated he feared for his and his family's safety. Due to this stress, Dunkley alleged he could not concentrate at work, which he claimed led him to cause a gasoline spill. After the spill, Dunkley resigned.

The Ruling

Dunkley filed a complaint against Coraluzzo alleging violations of the New Jersey Law Against Discrimination ("NJLAD") and the Conscientious Employee Protection Act ("CEPA"). He argued that Coraluzzo failed to take "proper steps to curb discriminatory conduct because [Coraluzzo's] anti-harassment policy lacked structure and monitoring mechanisms; [Coraluzzo] did not train its supervisors and employees regarding the anti-harassment and anti-retaliation policies; and [his] complaints were not effectively addressed as [Coraluzzo's] upper management did not show 'an unequivocal commitment' to assure 'harassment would not be tolerated.'"

The trial court held that Dunkley had established the existence of a hostile work environment, which requires a plaintiff to show

that the complained of conduct (1) would not have occurred but for the employee's protected status [(i.e., race, age, gender, etc.)], and was (2) severe or pervasive enough to make a (3) reasonable person believe that (4) the conditions of employment have been altered and that the working environment is hostile or abusive.

Although the trial court held that Harrington's conduct toward Dunkley satisfied the aforementioned test, it also concluded that Dunkley failed to prove that Coraluzzo was vicariously liable for Harrington's conduct. The trial court opined that Dunkley could not demonstrate that management ignored, participated in, or failed to take action to prevent such harassing conduct.

Under the NJLAD an employer's vicarious liability for conduct of a supervisor occurs "if the employer negligently or recklessly failed to have an explicit policy that bans . . . harassment and that provides an effective procedure for the prompt investigation and remediation for such claims." Accordingly, the Appellate Division affirmed the trial court's decision because it was undisputed that Coraluzzo implemented its anti-discrimination and anti-harassment policies. Moreover, management investigated Dunkley's allegations and took action to prevent future harassment, which proved to be effective as Dunkley admitted that he was not subjected to any further discriminatory treatment after he was reassigned to a new trainer. Although Dunkley's supervisors failed to report his complaint to Human Resources as required by Coraluzzo's employee handbook, the Appellate Division found that the methods that management employed did not fail to meet the company's established standards. In addition, the court held that Dunkley's perceived ostracism by co-workers failed to support a claim of hostile work environment under the NJLAD.

Dunkley also argued that he was constructively discharged as he endured "severe and pervasive" harassment, which negatively impacted his work performance. Constructive discharge requires a showing of severe and pervasive conduct, and also conduct that is "so intolerable that a reasonable person would be forced to resign rather than continue to endure it." The court concluded that the level of proof for constructive discharge requires a showing of "egregious circumstances," and "outrageous, coercive, and unconscionable acts." The Appellate Division upheld the trial court's decision because once Dunkley reported Harrington's misconduct to his supervisors, they immediately investigated the matter and reassigned him to a new trainer. In fact, Dunkley admitted that he did not experience any other problems after that action was taken. As such, the Appellate Division held that Dunkley failed to provide any proofs that would allow a jury to reasonably conclude that the conduct alleged was so unbearable that a reasonable person would be forced to separate from his or her employment.

Bottom Line

Having well-defined anti-discrimination, anti-harassment and anti-retaliation policies, and related complaint mechanisms, evidence an employer's due care with regard to maintaining a workplace that is free from discrimination and harassment. An employer can be shielded from vicarious liability if it maintains such policies, takes the appropriate actions to remediate allegations of harassment and discrimination, and trains its employees how to implement the same. We strongly suggest that employers not only distribute and post their policies, but also provide employees with regular training on the policies. Such procedures will help employers ensure that all of its employees are knowledgeable about what is "appropriate conduct" in the workplace and what actions will not be tolerated. These simple actions will serve as powerful protection for an employer when faced with defending discrimination and harassment claims.

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