PULLMAN &COMLEY

Another Form of Workplace Harassment

Working Together

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Harassment is a form of workplace discrimination. The most well-known is sexual harassment, which can consist of unwelcome sexual advances or requests for sexual favors, but also includes conduct of a sexual nature which interferes with an individual's work performance or creates an intimidating, hostile or offensive working environment. Sexual harassment is prohibited in discrimination law because it is based on a protected characteristic, namely gender. Discrimination law also recognizes harassment based on other protected characteristics, such as race, ethnic or national origin, or disability, where the offensive conduct is so severe and pervasive that it too creates a hostile working environment. And under the law, employers can be liable for the effects of a hostile environment.

On the other hand, hostility and even threatening behavior in the workplace that is based on personal animosity rather than a protected characteristic is not covered by discrimination law. It can be said that a co-worker who harasses everyone regardless of gender, creed or color is not guilty of discrimination. However, there is an alternate legal path by which victims of harassment can hold their employers liable for the adverse effects of a severe and pervasive working environment created by an equal-opportunity harasser.

There is a Connecticut statute, Connecticut General Statute §31-49, which requires an employer to provide employees with a reasonably safe workplace, which includes "fit and competent persons as his co-laborers." The Connecticut Supreme Court has recognized that Section 31-49 allows an employee to sue for wrongful discharge if he is fired because of violations of the statutory policy of workplace safety that present a substantial risk of serious physical harm. A recent case decided in the New Haven superior court held that an employee who was fired after complaining about a potentially violent co-worker had pleaded a viable claim of wrongful discharge.

The co-worker in Maggipinto v. Ulbrich Stainless Steels & Specialty Metals, Inc. had threatened to fight the plaintiff – which the court quaintly described as soliciting to exchange fisticuffs with him – shoved him, and grabbed things out of the plaintiff's hands. The work involved machinery that could be hazardous in itself. The co-worker persisted in the threatening conduct, even after promising to stop, and the plaintiff had to work with him every day. The court found that common sense and human experience dictated that the job could pose a significant threat to the plaintiff's safety and welfare.

The take-away of course is that employers have both the right and the duty to maintain control of the workplace, and to protect employees from dangers arising from the conduct of fellow employees. Human experience also dictates that it is the rare workplace that is completely free from occasional unpleasantness,

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and courts have often said that the discrimination laws are not a code of civility. But when hostile behavior is so severe and pervasive that it threatens or intimidates to the point that an employee cannot perform the job, whether based on a protected characteristic or general meanness, the employer may incur liability.

Posted in Discrimination, Termination

Tags: Sexual Harassment