



## Why Would Employees Tease About Nooses In 2013?

Insights

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### **(Labor Letter, June 2013)**

It was surprising and disappointing to read about a punitive damages award against a North Carolina employer who allegedly tolerated employees referring to an African-American coworker as a “coon” and offering him a hangman’s noose. It’s 2013, not 1960.

It’s bad enough when one has to defend against fabricated allegations about racial slurs and name calling, let alone when it apparently, in fact, happened. Such a situation is a nightmare for an employer, and to state the obvious, should never have occurred. But never say that “it couldn’t happen in my company.”

### **How Could This Happen?**

The conduct described in this case is reprehensible. But did it start somewhat innocently and escalate to something this terrible? Was this a decent company asleep at the wheel and not a throwback to a place found in the recent movie, “Django Unchained”?

We can only speculate, but according to the EEOC’s lawsuit, Contonius Gill and Robert Floyd, Jr., both African-American, worked as truck drivers for A.C. Widenhouse. From as early as May 2007 through at least June 2008, Gill was repeatedly subjected to unwelcome derogatory racial comments and slurs by the facility’s general manager, (who was also his supervisor); the company’s dispatcher; several mechanics; and other truck drivers, all of whom are white. The comments and slurs included “n—r,” “monkey” and “boy.” Gill testified that on one occasion he was approached by a coworker with a noose and was told, “This is for you. Do you want to hang from the family tree?” Gill further testified that he was asked by white employees if he wanted to be the “coon” in their “coon hunt.”

The other employee, Robert Floyd, testified that when he was hired in 2005, he was the only African-American working at the company. Floyd said the company’s general manager told him that he was the company’s “token black.” Floyd testified that on another occasion the general manager told him, “Don’t find a noose with your name on it,” and talked about having some of his “friends” visit Floyd in the middle of the night. Gill repeatedly complained about racial harassment to the company’s dispatcher and general manager, and Floyd complained to an owner of the company, but the harassment continued, according to testimony

### **Action Points**

## **ACTION POINTS**

Absolutely nothing will get the EEOC's attention faster than allegations of nooses, KKK markings or use of racial slurs like "coon." The EEOC is actively looking for such cases to litigate so as to "send messages" to discourage bad behavior. They may not be too picky about their fact checking, so if you receive an EEOC charge, even if the claim seems patently frivolous, call counsel. The EEOC is especially interested in cases where they believe that the complained of behavior suggests systemic discrimination, which may broaden into a class action or company wide scrutiny.

Our advice? Stop bad behavior before it gets so bad. Everyone expresses outrage at the allegations in this type of case, but what kind of culture allowed things to get to that point?

Ask yourself: "What is human resource's role or upper management's in preventing this kind of problem?"

Does your company take seriously its Complaint, Non-Discrimination and No-Harassment policies? Do you regularly train employees and supervisors . . . or, just pay lip service to the idea? Now, ask these same questions about each of your sites.

Annually train supervisors about effective discipline and discharge. Many supervisors come up through the ranks and do not know how to deal with such conduct. Don't focus solely on Non-Discrimination and No-Harassment obligations – instead, demand "professionalism." Always promptly investigate even seemingly minor claims and respond to the claimant.

Finally, remember that lawsuits "*walk into your workplace on two feet.*" I am not focusing on legitimate claims. I am talking about fabricated or frivolous claims. There seems to be a self-selection process where the employees with the bogus discrimination claims file suits, and individuals with genuine grievances, simply get another job. Neither outcome is good.

So, in addition to maintaining a professional workplace where such behavior doesn't occur, recognize the type of hire who may use such claims as a means of retaliation for some grievance, or who always assumes that any adverse action is due to discriminatory intent rather than their own performance.

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