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Lisa Nagele-Piazza (00:00)
Welcome to The FP 5: Five Things for Your 9-to-5. We help employers make sense of the fast-moving world of workplace law and compliance by breaking down topics into five parts. I'm Lisa Nagele-Piazza from the Fisher Phillips Content team.

Now, we've probably all heard someone described as a “Karen.” It's a pretty common expression now, but what happens when somebody uses that term at work? Could it actually amount to race discrimination? That's exactly what a federal court in New York recently had to consider, when a White school psychologist sued her employer after a coworker called her a Karen. Today we're talking about what this case means for employers, where the legal line is when it comes to offensive workplace comments, and how HR should respond when employees complain.

Sheila Abron returns to the FP 5 to break down this case for us. She is a partner in Fisher Phillips’ Columbia, South Carolina office and chairs the firm's government contracting, compliance, and reporting practice group. Thanks for being on the show, Sheila.

Sheila Abron (01:03)
Thanks for having me again. Happy to be here.

Lisa Nagele-Piazza (01:06)
Before we get into the five things today, Sheila, tell me how the types of discrimination complaints employers face have changed throughout your career.

Sheila Abron (01:15)
So I think that's a really great question. And this case is probably one of the ways I think they have changed the most, is because as we as a society grow and change and more things happen, discrimination cases take on kind of a different, a different lens, right? So if you think about traditional sex harassment or sex discrimination, it looked very much like it did in the 80s, where it may have been like a boss that was propositioning someone or saying “You can't get this promotion unless you perform this type of, you know, sexual favor for me.” But you know, as it's grown, we've seen things that can be very different. We might be looking at things from going from news articles, to memes on phones, to just different things that happen kind of in our societal lexicon. And so the law trying to keep up with kind of the social, societal changes, that really has been one of the most interesting things that I've seen about the way harassment and discrimination in Title VII and state law changes have impacted the way this law looks as I've been practicing.

Lisa Nagele-Piazza (02:29)
And that brings us to our first thing for today. An offensive workplace comment doesn't automatically amount to unlawful discrimination. And most people have probably heard someone being called a Karen, but I don't know that many would immediately think of it as a race discrimination issue. So can you walk us through what happened in this case, Sheila? You know, who the people were that were involved and how the dispute ended up in federal court. And I know, I read the opinion. I know there were a lot of moving parts in this case, but I think we can focus on the Karen issue itself.

Sheila Abron (03:04)

Yeah, absolutely. Cause there were a ton of moving parts in here. So essentially this started out with the plaintiff in this case, kind of walking into a meeting with a colleague. The colleague and she were walking in together to go see someone at the school, and the administrative assistant for the person they were going to see said something to the effect of, “Oh, here comes Karen One and Karen Two.”

And you know, they immediately complained and said this kind of made them uncomfortable. It was aggressive commentary, that sort of thing. And they immediately had a meeting about it to discuss it. And I think we'll get to this point, but that meeting kind of went off the rails a little bit and added to this, and there were some investigations that happened. But ultimately, this employee determined that she was going to resign and then brought a lawsuit with a lot of claims related to the Karen issue. There was some disability, some retaliation, all that other stuff in there. But that was kind of the essence of the Karen claim was that someone said “Here comes Karen One and here comes Karen Two.”

Lisa Nagele-Piazza (04:12)
And what would lead her to believe that this term was discriminatory?

Sheila Abron (04:16)
And that's the interesting part about harassment and discrimination law. And we'll talk about that I know as we get through the podcast, but thinking about her perception of what it means to be a Karen and how that has grown in society and the social lexicon and whatnot, she interpreted Karen to mean “a difficult White woman.” So for her that was the case, or at least “a White woman that makes complaints and whatnot.”

Lisa Nagele-Piazza (04:50)
Sure. So what did the court, and obviously we'll break it down a little bit more detail, but what did the court ultimately decide?

Sheila Abron (04:58)
So the court here decided that the kind of use of Karen, especially because it wasn't frequently used, it was only a came up in this one particular instance, was not going to be sufficient enough to state a claim of discrimination or harassment under federal law. And we'll talk about some of the nuances I know in a little bit, but the court ultimately said that that use of Karen was not going to meet the threshold for Title VII.

Lisa Nagele-Piazza (05:26)
Okay, good to know. And then obviously, even though the term Karen was not considered discriminatory in this particular context, it's a little bit more complicated than that, right?

Sheila Abron (05:38)
Yeah, absolutely. And I think that especially with all employment claims, right? The surrounding facts and circumstances often tell the story of whether liability is going to attach. And we'll talk about some of those nuances. But I don't want the takeaway to be that the use of Karen will never be something that stakes a claim. It's just under these facts and circumstances, it did not.

Lisa Nagele-Piazza (06:01)
Exactly. That's a very important point to bring up early on here today.

And that actually brings us to thing two. The law draws a distinction between offensive behavior and unlawful harassment. So Title VII of the Civil Rights Act, which was the federal law at issue in this case, prohibits discrimination based on race, including unlawful workplace harassment. But not every rude, insulting, or inappropriate remark is going to meet the legal standard. And we talked about that a little bit. So let's talk about the hostile work environment claim and sort of what the legal standard is for determining when it rises to that level.

Sheila Abron (06:46)
Yeah, absolutely. So for the legal standard for hostile work environment, it typically is going to be something that is severe or pervasive and prevents someone from being able to kind of continue to do their job. And so oftentimes courts are really going to be looking at what that severe or pervasive means. And as I like to do it when I'm doing supervisor and manager training, this is how I make that distinction: Something can be severe, meaning it happens one time, but it is so aggressive that it only needs to happen one time. And so I think about certain racial epithets that someone might say, just the one time can be enough. You contrast that with pervasive, which is something that's not as significant or impactful, but it happens so many times. So an example I might give is that someone is asking someone on a date every single day for 30 days, 40 days, 45 days, right? We could agree objectively that if someone asks someone on a date every day for 30 days, that looks very different than someone aggressively kissing someone or assaulting them in a physical manner, right? So that would be the pervasive piece. It's that something that happens over and over and over again. That would be the distinction that's there.

Lisa Nagele-Piazza (08:01)
And then when it becomes pervasive, it's really impacting someone's job, even if it might not be severe like the other examples.

Sheila Abron (08:08)
Yep, exactly. And so courts are gonna make that objective and subjective kind of connection piece when they're analyzing what has happened.

Lisa Nagele-Piazza (08:16)
So in this case, how important was the fact that the comment, the Karen comment, was isolated to one incident?

Sheila Abron (08:24)
I think that really is what the court focused on in terms of its assessment. And there is a long line of cases, I know we talked about this in New York, but there's a long line of cases across the nation that look at whether something is a stray remark, whether something is an isolated comment. You often see courts looking at it that way. And so I think that was the really strong distinction here, along with the fact that there weren't any other additional facts that provided some content here. So you may remember years and years ago, not years and years ago, I'd like to think it was years and years ago. It was probably within the last five or six years, there was reference to a woman who had done something in a national park or in a state park and someone referred to her as like the "park-name Karen," but it had additional facts and circumstances. There were complaints made, there was calling of the police. There was all these other things that kind of melded into that reference point. And this was really just a, you know, kind of a secretary walking up to say that. And we'll talk about this in a moment too. But how the employer handled it also I think was really important.

Lisa Nagele-Piazza (09:41)

Absolutely. And then that leads me to think, is there a circumstance where in the workplace this Karen comment could have been a valid discrimination claim? And you mentioned that a little bit about the other circumstances around it. So I'm assuming then if maybe the secretary called them names every day and it continued, that then you have your pervasive, or if there were other events happening in addition to the Karen comment.

Sheila Abron (10:10)
Absolutely. I think more context around why they were being called Karens, what the complaints were, kind of around that, but just the circumstances didn't provide any further context about why or how that could have been interpreted from a race standpoint.

Lisa Nagele-Piazza (10:34)
And moving on to our third thing today, employers need to take discrimination complaints seriously, even when the underlying conduct might not be illegal. So here's where I think things get important for HR because something that doesn't rise to the level of unlawful harassment, it can't be ignored, right? Like they still have to do something about it. And that's kind of what you were hinting at earlier. So let's say an employee goes to HR and says, “My coworker called me a Karen, and I believe that's race discrimination.” What's the appropriate first response?

Sheila Abron (11:09)
Absolutely. So you had a whole bunch of really great gems in there around just because things aren't rising to the unlawful discrimination standpoint, they're likely going to rise to a violation of our policies and procedures. So making sure that we have those in place and we're treating, you know, these reports very seriously. So if someone comes to report an incident like that, the first thing to do is to listen and document that concern. And one of the other things that I always talk about in training with managers and supervisors and HR, especially around harassment and discrimination, is that your personal perception of the conduct doesn't matter, right? It's from the perception of the person who's doing the reporting, the perception of the victim. And so it is your job to make sure that you are taking everything as seriously, even if it's not something that you would personally perceive as a violation. That's why we do our training around what constitutes those different things, what kind of behaviors can signal a potential violation of our policy so that we are looking at those complaints and we're taking all of them very seriously.

Lisa Nagele-Piazza (12:19)
Yeah, so I could imagine and in this case, I know there was a meeting after this comment, and one of the higher ups in the school didn't believe that Karen was a racially charged term, even though the woman who was complaining about it indeed believed that herself. So as HR is investigating complaints, how should they deal with people having different interpretations?

Sheila Abron (12:48)
So that's a really common thing that happens, right? Because everyone kind of shows up to work with their own personal beliefs and opinions on things and whatnot. And that's why when you're anchoring them in policy and practice and procedure, and you've had really strong training around those different things, even if someone's personal objection or personal opinion about something changes how they characterize it, “Oh, I was joking, I wasn't serious,” those types of things, when we have a firm rule, when we have a firm policy and practice and we have standards around appropriate behavior and conduct, that can be our North Star in how we handle these situations. And so the reason someone may have done something might go to how you address it from a

performance management standpoint, depending on the outcome of the investigation. But that doesn't necessarily change the fact that such behavior or conduct could violate our policies or procedures.

Lisa Nagele-Piazza (13:48)
Yeah. And then so what would the next step be sort of if you as an HR manager determine, okay, I guess you do have to decide, is this potentially unlawful behavior or is this just a violation of our company policy? You know, is there a different sort of path that you take from there in the investigation in sort of how you handle the situation?

Sheila Abron (14:11)
So, I don't think so because I think our policies and procedures should actually in some instances supersede what the law is gonna require of us. And so we should be handling them rowing in the same boat, in the same direction. So we're going to be doing investigations, we're gonna be talking to witnesses, we're going to be evaluating how we've handled past instances of this conduct, making sure that we're again being consistent and treating everyone appropriately and investigating. But I don't see a distinction, and in fact, as an HR manager, I don't know that there is a ton of time to be thinking about which is which.

Lisa Nagele-Piazza (14:48)
Sure.

Sheila Abron (14:48)
Right? You'll be thinking about it from a risk perspective. But at base, we have a potential policy violation. We have a scenario where someone in our work environment may not feel like they're being treated with dignity and respect. And that's something we have to address from an employee relations standpoint, from a risk management standpoint, from a policy and procedure standpoint, so many of those things call on the HR professional to act in those scenarios.

Lisa Nagele-Piazza (15:12)
Yeah. And then even if it isn't necessarily unlawful, but it's a violation of your company policy, you've got to treat everybody consistently under that policy. Otherwise you might actually then have a legal issue, right?

Sheila Abron (15:24)
Absolutely. Absolutely.

Lisa Nagele-Piazza (15:33)
You're listening to the FP 5. I'm Lisa Nagele-Piazza, and we're here with Sheila Abron. Sheila is a partner at Fisher Phillips in our Columbia office and advises employers on workplace discrimination, compliance, and investigations. Just a quick reminder that you can find a link to the Insight we've been discussing in this episode's show notes.

Moving on to our fourth thing: race discrimination protections apply to everyone, regardless of race. And I think this is such an important point to bring up. And in fact, I don't even like the term "reverse discrimination" because I think it's misleading, like, the law applies to everyone. So Sheila, I think an interesting aspect of this case is that the employee was White and she argued that she was being discriminated against because of her race. So let's kind of clear up the common misconception that Title VII protections don't apply to majority groups.

Sheila Abron (16:30)
Yeah, absolutely. And I also do not subscribe or believe to a thing as reverse discrimination. Discrimination is discrimination. Title VII, any of our anti-discrimination laws don't have a favored, if you will, category, except for our “Age” one. Age is ...

Lisa Nagele-Piazza (16:46)
That is true.

Sheila Abron (16:47)
There is a particular group that is gonna be protected. And so there is not this concept of reverse discrimination or that White individuals or women or men or whomever are not protected under our discrimination laws.

Lisa Nagele-Piazza (17:02)
Even religion, it covers “lack thereof” too, right? So it covers everybody.

Sheila Abron (17:08)
We cover the floor of everyone because the goal of our civil rights is that everyone should be able to go to work and be free from discrimination and harassment, not just any particular protected group.

Lisa Nagele-Piazza (17:20)
Absolutely.

And the Supreme Court actually recently addressed discrimination claims brought by majority group employees, I know you're very familiar with that case. So what did the court say in that case? And why does it matter here? I know there was like a little conflict between the federal appeals courts about whether there was sort of a heightened standard.

Sheila Abron (17:42)
Yeah, absolutely. And so you're almost there on the full thing, but the Supreme Court addressed this issue because there was a perception among certain federal courts that if you were in a majority group, they didn't fully define majority group, but if you were in a majority group and you were alleging discrimination, you had to take an additional step of the normal kind of burden of proof that a plaintiff would have, you had to do this additional step by providing context around how your employer was one of those special or different employers that would discriminate against the majority. So you had an additional kind of hurdle to have if you were, quote, in the majority for the context. And that case, the Supreme Court case was actually really, really interesting because, in that instance, the plaintiff there was a heterosexual person and they were alleging discrimination from an LGBT status because several people kind of in the employment decision-making process were in the LGBT category or were homosexual, gay, or lesbian. And so that was an interesting way of looking at that case because it didn’t come along race lines, which I think sometimes is the place where people automatically go for discrimination or reverse discrimination. They're thinking about whether or not a White person can bring a claim.

And here's the thing, that because Title VII is protective of everyone, those claims have been around, right? We have always had claims where White individuals or men have brought claims of discrimination or harassment. Those have been in place, been litigated, been investigated by the EEOC. Those things have been around because that is, Title VII is neutral.

Lisa Nagele-Piazza (19:33)
And I know the EEOC also recently came out with guidance kind of saying the same thing that they do not support a reverse discrimination standard.

Sheila Abron (19:44)
Yeah, this is actually a high priority for the current EEOC. We've seen different pronouncements from the head of the agency, different messaging that's come out. They really want to ensure that the public is aware that they don't ascribe to this reverse discrimination. And in fact, they are specifically looking for claimants that would believe that they are subject to this quote unquote reverse discrimination, specifically looking for White individuals, specifically looking for males to bring these types of claims or to ensure that they are aware that the EEOC has enforcement capabilities and investigatory capacity for those types of claims.

Lisa Nagele-Piazza (20:26)
Our fifth and final thing today, how employers respond to a complaint can be just as important as the complaint itself. And we've been talking a bit about that. We talked about some HR best practices. Let's talk about what the employer did in this case, the school district, and how they handled the situation, because I found that to be very interesting, and it was, it was brought up in a bit of detail in the opinion. So how they responded probably mattered in terms of the outcome of the case. So what do you think the school district got right?

Sheila Abron (21:05)
Yeah, so one is they clearly took it seriously and they acted promptly. That's what the law is going to require is that we have this prompt, you know, response. And so immediately upon the complaint, they had a meeting about it, they talked it through, and then they also conducted investigations around it. And those investigations had documentation associated with it. They talked to multiple witnesses, including the complaining party.

Sometimes employers might conduct an investigation and then they have not talked to the complaining party or they've not talked to an integral witness. But the court spent a lot of time here talking about the different things that were done in this particular context. They also had an opportunity where there was the somewhat facilitation of an apology. And so after one of those meetings, there was an apology that was exchanged. And the plaintiff said at that point that she felt good about the resolution, that she had no more issues. And so the court said, you know, from that point until her resignation, which she termed as a constructive discharge in her claim, there was a three-year gap between when that happened and when she said she felt like she had to resign, and kind of called back to that period. And so I think the court found instructive not only that extreme delay, but kind of in the immediacy, in that moment, “We've done the investigation, we've talked about it, we've done all these things.” The person seemed to be at a good place with the resolution and the outcome. And so from a lot of different angles, the school district approached this from a resolution standpoint, and I think really provided a strong record for the court to evaluate in terms of their response.

Lisa Nagele-Piazza (22:58)
Yeah. And you know, one aspect of this case that I think HR professionals can really relate to is when you have this meeting. And in this case, they had the meeting, they had the, I think assistant principal, they had everybody involved there to resolve it. And the meeting actually got out of hand and got pretty heated. And I think maybe that's part of what led to the lawsuit later, more so than just the Karen comment itself.

Can you talk about that a little bit and sort of what managers can learn about how to keep everyone sort of cordial, professional in these types of meetings, which can obviously be very emotionally charged?

Sheila Abron (23:40)
Yeah, absolutely. So one of the things, and you kind of hit on something that I think has to be part of manager and supervisor training is that these things can be emotionally charged. And so when I'm doing training with managers and supervisors, one of the things that I tell them before going into these meetings is you need to practice. You need to think about what you are going to say. You need to watch yourself in the mirror say it. You need to hear your tone, you need to hear your inflection, and you need to internally deal with the feelings that come from someone accusing you of wrongdoing. Like whether you think it's serious, whether it makes you angry, all of those things, so that you can maintain your kind of composure in this because you're absolutely right. From that meeting and the kind of negative interactions that came from the meeting, the plaintiff was able to then point to other subsequent interactions with that same person that they felt kind of led to some other claims that they had in this lawsuit, all stemming from that meeting. And so had that meeting gone a little bit differently, there would not have been points to that. But I think the court recognized that someone put their hand in someone else's face, people were trying to argue facts about whether Karen was discriminatory or not and whether she should feel upset about it. Like that ...

Lisa Nagele-Piazza (25:07)
And that's where your point comes in there too, is that it's about how it felt to the person who's bringing the complaint.

Sheila Abron (25:14)
Yes, yes. I thought it was really interesting because one of the witnesses in the meeting said something to the effect of, “I've had training on this. And so I because of my training, I know that it's not a problem.” And that really, I think, was a missed opportunity, it felt like, to try and listen to the person, hear the dialogue, that sort of thing. There was an immediate kind of shutdown and a dismissal of the kind of feelings that that person had in the meeting around that. And so, again, practice what you're gonna say, talk it through, practice your words, regulate your emotions, all of those things, because that meeting definitely got out of hand and you could see the breadcrumbs that that took us to this litigation.

Lisa Nagele-Piazza (26:02)
Absolutely. And so I guess if you could just give HR professionals one piece of advice for handling complaints about offensive workplace comments, what would it be?

Sheila Abron (26:14)
I would say treat them all seriously because the word “offensive” is so broad, it can bring in so many different things. And it helps you understand. It's also better to be safe than sorry, right? So if we're gonna investigate it, maybe it is unfounded, but we've done our due diligence and our obligation of investigating, of listening to the employee. We've also shown the employee that we're taking it seriously because sometimes that is a bigger message from what we are doing in our investigations than the investigations themselves, is we're letting our workforce know that we care and that we are showing concern and we're taking things very seriously.

Lisa Nagele-Piazza (26:57)

Yeah, I think that sums up the theme of our episode today is take complaints seriously, listen to everyone involved, and you know, respond professionally.

All right, Sheila, since you've been on the FP 5 before, we can't let you get away with answering the same five questions as you did last time, but we do always like to ask five questions to get to know you a little bit better. So we have some new ones for you. Are you ready?

Sheila Abron (27:29)
I am, let's go.

Lisa Nagele-Piazza (27:31)
Great. First one, which emoji do you use most often?

Sheila Abron (27:35)
Um, because I'm a millennial and usually end sentences with “LOL” it's the emoji that's laughing all the time.

Lisa Nagele-Piazza (27:42)
Nice. I always go with the hundred percent. I feel like it just gets the point across and then I don't have to send a long reply.

Sheila Abron (27:51)
I like that. I like that.

Lisa Nagele-Piazza (27:53)
Second question, what's the most embarrassing song you have on your favorite playlist?

Sheila Abron (27:58)
Oh my God. So this is so sad, but like hopefully I don't know, maybe endearing. But in any event, I have two songs from *Hamilton*, “Nonstop” and “Satisfied.” And that should not be embarrassing in and of itself. It's that I just discovered them like within the last two years. So I think everyone has been on the *Hamilton* train and probably fully aware of these for like a decade. But I have just discovered, in fact, my Spotify wrapped last year had “Nonstop” in like my top five plays of the year. So that's yeah. A little embarrassing, but it's fine.

Lisa Nagele-Piazza (28:34)
I’m late to the game too because I only saw *Hamilton* just recently within the last year when they were playing the I guess the Disney stream at my movie theater. So I went to finally go see it, just settled in for the three hours. Yeah.

Third question. If you could instantly become an expert at any hobby, what would you choose?

Sheila Abron (28:56)
Oh my gosh, it would be tennis. I just started playing tennis and I'm so bad. I'm so, so bad. It is really, really bad. And I would love to like just kind of get to a good part.

Lisa Nagele-Piazza (29:09)
Nice, nice. And a fourth question for you. Have you ever had a celebrity encounter?

Sheila Abron (29:16)
Oh my gosh, a celebrity encounter. I would say, yeah, I've had a couple of them, but I will tell you the one that was most like cringy is I was in New York and my friends and I had gone to a comedy show and Dave Chappelle was going to go on the show like afterwards. And so he and his like entourage were outside when we were leaving. And he was like, “Yeah, it's okay like to take pictures” or whatever, but you know, he wasn't gonna engage with the fans. And I just yelled like “Be funny, do something funny!” And he's not even like a comedian that like uses his body to be funny. It was just ridiculous. And I was like, oh no. This is why the universe does not let me interact with celebrities because I'm so ridiculous. That was also like ten years ago, so maybe that's what I was doing instead of watching *Hamilton*.

Lisa Nagele-Piazza (30:06)
I had the greatest celebrity encounter. I was in a literally in a gondola traffic jam in Venice with Ozzie and Sharon. And it was all ladies and everybody's like, “Oh my God, Sharon!” you know? And Ozzie's like, “What about me?” And we were like, “We love you too.” And he was just like so polite. We had a conversation like before the boats just moved on and went their own way. That was like fifteen years ago, but ...

And our fifth and final question for you. What's one thing your coworkers at Fisher Phillips would be surprised to learn about you?

Sheila Abron (30:42)
I think they'd be surprised to learn that me and my mom have the same first name. So technically I'm a junior, not like legally, but my mom and I have the exact same first name, which caused a lot of consternation when I was growing up when people would be calling to ask to speak to me, especially if they were young gentlemen and my dad was like, “What? Who's calling? Who are you trying to speak to?”

Lisa Nagele-Piazza (31:04)
That's so interesting. And you both actually go by Sheila too? 'Cause I know like a lot of times like if my friend's dad's name is James, he might go by Jimmy, you know.

Sheila Abron (31:15)
No, I'm we are both going by Sheila. It is yep, full on Sheila's.

Lisa Nagele-Piazza (31:20)
Very interesting.

Alright, well that's all the time we have for now. Thanks again, Sheila, for being on the show.

Sheila Abron (31:26)
I'm happy to be here. This was fun.

Lisa Nagele-Piazza (31:30)
And thank you for listening to the FP 5. You can read more about this case in the Fisher Phillips link in our show notes. And if you enjoyed this week's episode, please consider ranking the FP 5 in your favorite podcast app. We

are off for the holiday next week, but we'll be back in your feeds on December 3rd. I hope everyone has a great Thanksgiving.

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