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# WHAT'S IN A WORD? MAYBE A LAWSUIT

Insights
May 4, 2022

A single word may be enough to land your dealership at the receiving end of a lawsuit – maybe even a jury trial. Especially, as an Illinois dealership recently learned, if that word is the most egregious racial epithet in the English language. In a case brought by a former salesperson alleging race discrimination and harassment, a federal court in Illinois recently ruled that the employee had presented enough evidence to survive dismissal and to allow a jury to decide if the alleged use of the racial epithet in the workplace created a hostile work environment. What can your dealership learn from this decision?

**Dealership Escapes Discrimination Allegations Due to Solid Evidence of Consistent Treatment**

In response to Ronnie Scott's lawsuit, Chevrolet of Homewood first argued that he was not entitled to a jury trial on his race discrimination claims because they lacked evidentiary support. The court agreed, finding no evidence that Homewood treated him less favorably than employees outside his protected class. For example, the court noted that the dealership paid Scott in accordance with his pay plan and in the same manner as it paid employees of all races.

Similarly, the court concluded that the dealership's reason for not allowing Scott to access a large customer database was consistent with its reason for denying access to salespersons of all races. In response to each example of alleged discrimination, the dealership showed that it applied and enforced its rules and policies on a consistent basis without regard to race.

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## Use of Racial Epithet Dooms Dealership's Defenses

The court, however, rejected Homewood's argument as to Scott's hostile work environment claim. The dealership argued that his allegations were insufficient to meet the legal standard for establishing a hostile work environment claim. They said the four allegations where co-workers used the racial epithet in his presence – and at least once when he was called the slur directly – were not sufficiently severe or pervasive to alter the conditions of his employment and create an abusive working environment.

The court disagreed. It noted that there is "no magic number" of racial slurs needed to establish a hostile work environment claim. It also noted that the alleged use of the racial epithet fell on the "more severe end" of the spectrum when it came to assessing slur usage. The court further noted that perhaps no single act can more quickly alter the terms and conditions of employment and create an abusive work environment than the use of an unambiguously racial epithet by a supervisor in the presence of a subordinate employee. Because Scott presented enough evidence for a reasonable jury to conclude that he was subjected to racially harassing conduct that was severe or pervasive, his case will proceed to trial.

## Precise Compliance with Reporting Policy Not Needed

The dealership also argued that even if the alleged conduct met the standard for establishing a hostile work environment, the claim still should be dismissed because Scott did not follow the dealership's formal complaint reporting process. The court acknowledged that an employee's "undisputed" failure to make the employer aware of alleged harassment may relieve the employer of liability, even if the alleged conduct occurred. But that's not what was found to have happened here.

Here the employee testified that he had made several complaints about the use of the racial epithet against him, including at least two complaints to the General Manager. Scott claims that the dealership did nothing in response. The court found that a jury could conclude he made a concerted effort to inform the dealership of the alleged harassment and to avoid the harm, even if he did not precisely follow the dealership's reporting policy.

## What Can You Learn From this Case?

Although the court's ruling is not the final word on this case, it nevertheless is significant and instructive for several reasons. One, zero-tolerance language in a no-harassment policy should mean "zero tolerance." Every employee from top to bottom should know that reality and the consequences for violating the policy.

In the case discussed above, the employee alleged that two high-ranking management employees used racial slurs at the workplace on multiple occasions. If a jury believes the employee's testimony, it could conclude that the dealership's no-harassment policy was window dressing only – or that these managers had reason to believe they could violate the policy with impunity based on their positions or contributions to the dealership.

The case is also a reminder that not all inappropriate conduct is viewed the same. Normally, comments alone are insufficient to create an actionable hostile work environment, especially if made over time. As this court decision demonstrates, however, there are some comments – such as racial epithets – that may be sufficient to create legal liability. The law does not include a free pass provision for a certain number of inappropriate comments.

For that reason, preventive measures such as training and consistent enforcement of the no-harassment policy are critical. No dealership wants to be in the position of defending the use of racial epithets by saying it "*only*" happened four times or that the General Manager "*only*" used a racial slur twice when referring to employees.

The case also demonstrates the value of establishing policies and practices and applying them in a consistent manner. Most discrimination cases are based on allegations that the employer treated the alleged victim less favorably than someone outside their protected class under nearly identical circumstances. The dealership here successfully countered each of the employee's examples of alleged race discrimination with evidence of its prior, consistent actions under similar circumstances and appropriate documentation. By pausing to ask the question "what have we done previously when this situation arises" before acting, and then acting consistent with that precedent, you should reduce the risk of discrimination claims.

**Conclusion**

The phrase “actions speak louder than words” is apropos. By taking appropriate preventive and corrective actions, your policies become more than words and should reduce the risk that your employees will use words that could create a hostile work environment.

We will monitor these developments and provide updates as warranted, so make sure that you are subscribed to Fisher Phillips’ Insights to get the most up-to-date information direct to your inbox. If you have further questions, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our Automotive Dealership Industry Team.