

## IS IT OK TO TELL POLISH JOKES AT WORK? (ANSWER: NO)

Insights

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By this point in the 21st century, most working professionals know that there are certain things that are absolutely unacceptable in today's workplace. What might have been tolerable at an office setting in the 1970s can get you fired today. Sexually suggestive remarks, pornography on your computer, knocking back a few stiff drinks in your office, and racial epithets hurled at coworkers are actions that are no longer tolerated.

But what about a good, old-fashioned Polish joke? You know, the kind where employees don't really mean any ill will or disrespect towards a certain ethnicity, and they don't seem to be revealing any racism. They're just trying to have some fun, and everyone seems to be enjoying them. Those are still OK, right?

Wrong. A West Virginia mining company and an Oregon auto repair shop just learned the hard way that teasing or harassing behavior including national origin insults can lead to an employment discrimination lawsuit and a hefty price to pay, even if you think there is no malice behind the insults.

### **Polish Jokes At A Mining Company**

Michael Jagodzinski was a mine foreman for Rhino Energy in Bolt, West Virginia. According to a lawsuit filed in federal court by the EEOC, he was treated to an array of derogatory remarks about his Polish national origin during the course of his employment. The complaint said that supervisors, coworkers, and subordinates would frequently call him "stupid Polack" or "dumb Polack" or other similar insults, and that coworkers would scrawl graffiti on mine walls

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saying things such as “Jag sucks” (and many others unprintable in this publication).

At some point, according to the lawsuit, a poster of the Geico caveman was hung in the workplace with someone labeling the character as Jagodzinski. Mimicking a popular ad campaign and making fun of Jagodzinski’s ill-fitting work uniform, the claim alleges that someone wrote on the poster: “Pulling in a belt...so easy a caveman can do it. But a Polack can’t.”

According to the complaint, Jagodzinski complained to management but nothing was done to fix the problems. The lawsuit said that when he tried to take pictures of some of the offensive content, he was disciplined for taking photographs in the mines without permission. And soon after his complaints, he was accused of sexually harassing another employee and terminated. Jagodzinski and the EEOC claimed that this reason was false and filed a national origin discrimination claim against Rhino Energy.

The company denied any wrongdoing but recently reached a settlement with Jagodzinski over the complaint, agreeing to pay him \$62,500 to resolve the lawsuit. The company also agreed to a series of corrective actions that it would take to comply with EEOC standards.

### **Russian Jokes At An Auto Body Shop**

In early March 2016, a former employee of True Form Collision Repair in McMinnville, Oregon filed a similar lawsuit claiming that he had been the victim of harassing behavior because of his Russian heritage. Sukhrob Rabimov claims that a coworker frequently called him “Rusky” to tease him. He claims that the final straw came when that same coworker tacked a poster on the wall with a picture of Rabimov’s face superimposed on top of a farcical picture of a bare-chested Vladimir Putin riding on the back of a bear. The picture was captioned: “Right to bear arms? In Soviet Russia, we have right to whole bear.”

Rabimov claims that he complained to the owner but that nothing was done to stop the harassment; he claims that he was soon fired in retaliation for complaining. The business denies the claim and says the lawsuit is “frivolous,” pointing to the fact that Rabimov did not seem upset by the poster when he worked there. The company claims that he was fired after he physically assaulted a coworker during an argument about a new parts acquisition system, although

Rabimov denies that occurred. The case will now proceed in court and could cost the company tens of thousands of dollars in legal fees at the very least.

### **Lessons To Be Learned**

The moral of the story is that what might seem like innocent teasing could end up being very costly. First and foremost, you should treat all mentions of national origin or racial epithets the same – with zero tolerance. You should not come down hard on an employee for insulting one ethnicity while ignoring claims regarding another ethnicity. In the eyes of the law, they are all to be treated the same. You should consistently enforce your policies prohibiting such conduct, and investigate any allegations thoroughly.

Second, you should ignore the fact that the employee does not seem to be offended by the behavior. You should put a stop to any such conduct immediately, even if the “victim” seems to be playing along. It could be that the butt of the jokes is joining in as a coping mechanism, unsure how best to respond to unwanted behavior. Or it could be that they are not upset at the time, but later will try to take advantage of the situation and claim that the behavior was upsetting as part of a legal action against you. Don’t give your disgruntled employees an opportunity to use these situations against you.

Third, you should train your workforce not to tolerate this kind of behavior. Your supervisors should be trained to put an end to it if they see it, and report it to your HR department. Your workers should be trained not to engage in it and report it to their supervisors or HR if they are the victims of it.

Finally, your policies should be comprehensive and clear, prohibiting all conduct that takes aim at others because of their national origin or ethnicity. They should make no distinction about any categories that can be fair game for jokes or teasing. In other words, your policies won’t say, “... but it’s OK so long as it is a Polish joke,” so your practice should be not to allow them at the workplace.

If you have any questions about these cases, or how they may affect your business, please contact your Fisher Phillips attorney.

*This Legal Alert provides an overview of two specific cases. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*