Employer Wins Dreadlocks Deadlock

THREE THINGS TO KNOW ABOUT LATEST COURT DECISION

Insights
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A federal appeals court recently ruled that a woman rejected from a job because she refused to cut her dreadlocks could not proceed with a race discrimination claim against the employer. The decision highlights the distinction between individual expression and inherently racial characteristics in the context of race discrimination claims under Title VII.

Here are three things you need to know about the September 15, 2016 decision in *EEOC v. Catastrophe Management Solutions.*

1. Title VII Does Not Cover Individual Expression
The facts of the case are fairly straightforward. Chastity Jones applied for a customer service position with Catastrophe Management Solutions (CMS), a Mobile, Alabama claims processing company. Jones, who is black, was initially told that she had been hired pending standard background tests.

However, the human resources manager told Jones that the company could not hire her because she wore her hair in dreadlocks. The HR manager allegedly said that dreadlocks "tend to get messy" and violate CMS' race-neutral grooming policy. The policy stated that "hairstyle should reflect a business/professional image. No excessive hairstyles or unusual colors are acceptable."

The Equal Employment Opportunity Commission (EEOC) filed suit on Jones' behalf, alleging that CMS violated Title VII of the Civil Rights Act of 1964. The EEOC argued that a prohibition on dreadlocks in the workplace constitutes race discrimination because dreadlocks are a manner of hairstyle "physiologically and culturally associated with people of African descent."

However, the 11th Circuit Court of Appeals (hearing federal cases from Georgia, Florida, and Alabama) disagreed. It said that Title VII only prohibits discrimination on the basis of immutable characteristics, such as race, color, or national origin. Because hairstyles are a mutable characteristic more akin to individual expression, they are not protected, even if closely associated with a particular ethnic group.

The court said that there is no little to no support for the EEOC's position, which was that Title VII protects individual expression if it is tied to a protected race. Instead, the court said that race

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discrimination protects against disparate treatment tied to inherited physical characteristics, not cultural practices.

The court concluded by noting that every court that has considered the issue has rejected the argument that Title VII protects hairstyles culturally associated with race. It cited to a 1998 decision from the 4th Circuit Court of Appeals and a 1975 decision from the D.C. Circuit Court of Appeals, and trial court decisions from Alabama, Georgia, New York, California, and Texas.

2. "Hair Discrimination" May Still Be Covered By Title VII

However, the court also noted that there could be certain instances where an employer's decision based on an individual's hair could be considered race discrimination under Title VII. It pointed out that any decision tied to an immutable characteristic could easily be considered conduct in violation of the federal antidiscrimination law.

For example, the court noted that discrimination on the basis of black hair texture would be prohibited by Title VII because it is distinct from the mutable choice of a hairstyle. It cited to a 7th Circuit Court of Appeals case where a plaintiff was able to proceed with a Title VII race discrimination claim based on the allegation that she was denied a promotion because she wore her hair in a natural Afro. It contrasted this with a New York case where a plaintiff was not permitted to advance a race discrimination claim after she claimed she was prohibited from wearing her hair in an all-braided cornrows hairstyle.

Although the focus of this case was on race discrimination, employers should also be wary of gender discrimination claims if their hairstyle policies unfairly restrict one gender compared to the other, or religious discrimination claims if employees are wearing their hair in a certain manner due to a sincerely held religious belief (read more here).

3. EEOC Dealt Another Loss

Finally, this case is another example of a federal appeals court rejecting a position taken by the EEOC. The agency doggedly pursues claims of discrimination on behalf of employees who believe they have been aggrieved by their employers, but in doing so, it often takes positions beyond existing boundaries in an attempt to extend civil rights laws.

In this case, the EEOC cited to its own Compliance Manual for support. The Compliance Manual is a document created by the agency as a guidepost for interpreting Title VII, but it does not have the force of law. In fact, it does not even stand on par with the agency's regulations, which are due to a certain amount of deference by federal courts.

The Manual states in no uncertain terms that the EEOC believes Title VII to prohibit employment discrimination against a person because of "cultural characteristics often linked to race or ethnicity," including names, clothing, grooming habits, accents, or manners of speech. In this case, the court chose to all but ignore the Compliance Manual and not provide it much deference or weight in determining Title VII's scope because it "runs headlong into a wall of contrary case law."

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(It also did not help that the agency took a contradictory position in a 2008 administrative appeal where it stated that policies prohibiting dreadlocks and similar hairstyles lie "outside the scope of federal employment discrimination statutes.")

This decision should remind employers to take the EEOC's Compliance Manual – and other similar enforcement guidance documents published by the agency – with a healthy grain of salt. After all, the agency will continue to push for a liberal and expansive reading of Title VII, but sometimes courts will call the EEOC out for such an attempt and reject those interpretations. It is often a wise course of action to check with your employment counsel to determine whether a certain position taken by the EEOC is one that needs to be followed or can be challenged.

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