Seventh Circuit Rules in Favor of Employer and Holds that Courts can Split a Hostile Work Environment Claim

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Authors:

Anthony W. Overholt
Stephanie V. McGowan

Relying on a 2002 Supreme Court decision, the Seventh Circuit held that courts can sometimes analyze a hostile work environment ("HWE") claim as two separate claims, distinguishing Plaintiff's complaint from the Court's prior decisions. The Marion County Sheriff's office, represented throughout the proceedings by Frost Brown Todd attorneys Anthony Overholt, Stephanie McGowan, and Kevin Schiferl, was accused of creating a HWE for a civilian records clerk who suffered from a disability. In *Brigid Ford v. Marion County Sheriff's Office,* No. 18-3217 (7th Cir. Nov. 15, 2019), the Court of Appeals affirmed the district court's summary judgment ruling which split the HWE claim in two and dismissed part of the claim alleging harassment by one of Plaintiff's co-workers. This ruling was a significant decision for employers faced with HWE claims and, also, established for the first time in the Seventh Circuit that the ADA provides for HWE claims.

In its summary judgment ruling, the district court denied summary judgment as to the alleged HWE environment created by the first two co-workers but granted summary judgment as to the claim that a HWE continued due to the actions of the third co-worker that Plaintiff worked with later. The case went to trial with the jury deciding in favor of the employer on the HWE claim involving the first two co-workers. On appeal, the Plaintiff challenged both the granting of partial summary judgment and the jury's decision rejecting the HWE claim created by the first two co-workers. The Seventh Circuit rejected all of the Plaintiff's arguments.

The Seventh Circuit established a new test for determining when a single lawsuit presents "not one but two disability harassment employment practices[.]" Explaining this new rule, the Court relied on a 2002 Supreme Court decision "to determine when different episodes of unlawful harassment, whether based on disability, race,

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sex, or any other protected category, may be treated separately by a district court." This multi-factor test considers (1) the length of time between the activities that comprise the HWE claim, (2) whether the supervisors overseeing the complaining employee and the harassers changed, and (3) the employer's response to the reports of those activities.

Here, because the MCSO transferred the first two co-workers from Plaintiff's work area, the Plaintiff's supervisors during the HWE period changed, and there was a significant gap between the events that created the alleged hostile working environment, her HWE allegation could be analyzed as two separate claims. The Seventh Circuit emphasized that it is only permanent transfer of the harasser that amounts to an intervening action by the employer, and the "incidental rotation of co-workers not calculated to address the harassment does not necessarily affect a hostile work environment claim against the employer."

Going forward, employers should consider the following factors that will be evaluated by a court when deciding whether a claim of hostile work environment can be analyzed as separate claims. First, did the employer respond to the HWE by taking an "intervening action" to remedy the harassment? Second, was there a significant gap between the events comprising the HWE claim? Finally, a court will consider whether there was a change in supervisors that occurs in the midst the HWE period. The case serves as an important reminder that supervisors must be trained on how to recognize and respond to claims of unlawful harassment.

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