



Mar 22, 2023

Categories:

[Publications](#)

Authors:

[Richard L. Moore](#)

Let's Rap About Zero Tolerance Policies

Recently, a white employee was fired under a company's zero-tolerance policy when he was overheard discussing a rap artist on a company phone. In another incident, a school security guard in Madison, Wisconsin, who was Black, was fired under the school district's zero tolerance policy when he objected to a student referring to him using the N-word. His is not the only instance of employees facing punishment for violating work policies when using the term. This article will dive into why such policies can be problematic and provide alternative approaches to help avoid the unintended consequences that can result from these policies.

Zero Tolerance Policies May Seem to Make Sense – At First

Upon initial review, a policy calling for the immediate termination of any employee that uses the "N-word" in the workplace seems to make perfect sense. After all, there is no reason why the "N-word" should be uttered in the workplace. And, because the word is so harmful and there is no reason why it should ever be uttered in the workplace, the punishment for using the word at work should be swift, certain, and severe. Immediate termination seems like an obvious consequence. So, there you have it, a clear, simple, and consistent solution to obvious inappropriate workplace behavior. But, let's see how adoption of such a zero-tolerance policy might play out under two different scenarios.

Facts Make a Difference

First, let's look at a scenario where a white worker refers to a Black colleague using the N-word – hard "r." He uses the word with zero love in his heart and clear racist intent. Well, in that situation, termination seems like an appropriate response. After all, immediately responding to this kind of behavior is not only the morally correct thing to do, but it is also the correct thing to do legally to protect the business from liability.

While cases addressing the issue have disagreed as to whether a single use of the N-word would support a claim for hostile work environment, if ignored, the use of the slur in the workplace would certainly invite a discrimination charge and likely a lawsuit. See, e.g., *Friend v. Interior Systems, Inc.*, No. 00-2170, 2002 WL 1058210, at *21 (N.D.Tex., May 23, 2002) (single use of “n word” by a coworker did not result in a hostile work environment; *Hardy v. Federal Express Corp.*, No. 97-1620, 1998 WL 419716, at *7 (E.D.La. July 21, 1998) (single use of “n word” by supervisor did not render a work environment racially hostile); But see, *Taylor v. Metzger*, (NJ 1998), (applying New Jersey law and holding that a single derogatory racial comment can create a hostile work environment). And, to defend itself, the company is going to be expected to have responded appropriately to the occurrence. See e.g., *Waldo v. Consumers Energy Co.*, 726 F.3d 802, 813 (6th Cir. 2013) (finding that a plaintiff asserting a hostile environment claim was required to demonstrate a basis for employer liability based on either a supervisor’s participation in the harassment that created the hostile work environment, or the employer’s negligence in discovering or remedying the harassment by the employee’s coworkers.)

Appropriate means taking the steps necessary to make sure that it does not happen again. See e.g., *Bryant v. Sch. Bd. of Miami Dade Cnty.*, 142 F. App’x 382, 384 (11th Cir. 2005) (holding that, under U.S. Supreme Court precedent, an employer has established an affirmative defense to a hostile work environment claim if it, *inter alia*, exercised reasonable care to prevent and correct promptly any sexually harassing behavior). Termination will certainly ensure that another policy violation by that employee does not occur. So, the most conservative approach for the company is to get rid of the bad actor. This will guarantee it won’t happen again and thus provide the company with an affirmative defense to a hostile work environment claim. (Although my California colleagues tell me that things are a bit more complicated in the Golden State. But, of course it is.)

Let’s examine another scenario. Two co-workers who also work for the same company as the racist who was just fired – one white, one Black – and both of whom have exemplary employment records are discussing Huckleberry Finn in the break room. During their literary

discussion they reference Twain's use of the N-word in the narrative and the significance of its use in the story and the historical relevance of the term in the context of Twain's masterwork, or whatever high-level literary discussion people who have such discussions might have. Someone in the break room overhears the discussion – after all, the use of the N-word in the workplace tends to grab the attention of those within ear shot – and they report the incident to HR.

Now HR has a problem. Under a zero-tolerance policy, this incident has to be treated the same as the first incident even though it is clearly distinguishable. The use of the word in the second incident was not directed at the Black employee, there was no racist intent, etc. But, under the draconian application of a zero-tolerance policy, the literary discussion merits the same punishment as the racist assault. And, because both the white and Black employees used the word, both would need to be terminated to avoid exposure to a discrimination claim.

While it should be obvious that these two situations are different and should be handled differently, a zero-tolerance policy would not allow this. Instead, the literary discussion is treated the same as the racist assault and the company is forced to terminate two solid performers who also happened have refined literary taste.

Real Life Situations Show Facts Can Complicate Things

As reported by the website AllHipHop.com, this was the situation in a recent discrimination charge that was filed against a company by a white employee who was discussing the late hip-hop star, DMX – admittedly, not Twain, but an artist of some renown, nonetheless.

The white employee was hired in 2000 and apparently had an exemplary employment record. As the employee tells it, he took a personal call on his company phone while on his lunch break. During the call, the employee was discussing DMX's music and used the N-word (the word does occasionally pop up in rap music, so, as with the Twain example, it is understandable why the use of the word would come up in discussing DMX's art). Another employee who overheard the call, heard him say the N-word – apparently spelled with an a, not an r to the extent that is a distinction that makes a

difference – legally, it does not. See *Noel v. Carite of Garden City*, No. 19-11493, 2020 WL 5891591, at *1 (E.D. Mich. Oct. 5, 2020) citing *Mack v. Wayne Cty. Cmty. Coll.*, No. 18-13986, 2020 WL 2542054, at 5 (E.D. Mich. May 19, 2020) (describing both uses as “derogatory” and “racial language”).

The employee was suspended pending an investigation and was later fired under the company’s zero-tolerance policy. The employee, who, again, was white, claimed this was discriminatory because female, Black, and Hispanic employees don’t suffer any consequences even though they often use terms that have reached celebrity slur status and are also described using only their first letters and also like the N-word, were prohibited under the company’s policy. So, he is suing and seeking all kinds of damages, which is what employees tend to seek when they sue their employer.

In the incident in Wisconsin, the school security guard confronted the student about his use of the slur toward him, and made the mistake of repeating back what the student had said and by allowing that word to pass his lips, violated the zero-tolerance policy and found himself unemployed. This result was so obviously misguided that it was reported that the singer/actor Cher offered to pay the security guard’s legal fees when she learned of it.

Better Alternatives to Zero Tolerance Policies

Zero tolerance policies are blunt instruments that tie the hands of management and prevent managers from considering the unique facts underlying each situation and respond accordingly. Managers should have the ability to make appropriate decisions to insure that the company maintains a work environment free from racial hostility, while at the same time ensuring that good workers that make a mistake or use poor judgment, or who otherwise inadvertently trip a wire are not fired because of a policy that forces decisions on management instead of allowing managers to use the common sense and judgement that they are paid to use in their role as managers.

Unless you work for a record company producing hip-hop music, the N-word has no place in the workplace, period. (Other behavior

like bringing a weapon to work, making unwanted sexual advances, and stealing fall into this same category). But context is everything. If employees want to discuss Twain and are overheard repeating the N-word when describing a particular passage, or if they are in a heated debate over who is in their top five (the right answer by the way is: Kendrick, Mr. Shawn C. Carter, Biggie, Eminem, with Nas and Black Thought tied for the fifth spot) the proper response to this one-time error in judgment is likely a warning, not immediate termination. But the racist idiot who decides that it's alright to call a co-worker the slur with all the racist intent that comes with it – then, yes, that fool needs to be gone before he ends up buying the company a lawsuit and possibly causing someone else to lose their job for violating the workplace anti-violence policy.

Zero-tolerance policies may at first blush seem like a simple, effective, and consistent way to handle violations of workplace standards and policies. However, workplaces are full of human beings and as a result are full of all the complexities that come with dealing with human behavior. As a result, adopting draconian measures to deal with behavior that only has superficial similarities results in a culture of fear and mistrust among employees and can result in the loss of good employees that make a mistake, something that human beings tend to do.

Fortunately, there are alternative approaches to zero-tolerance policies that employers can implement to create a more positive and productive work environment and give managers the flexibility to do what they are hired and trained to do – manage. Some alternatives to consider include:

- **Progressive or Structured Discipline:** Instead of limiting the choices to termination or nothing, employers can implement a discipline policy that allows for a series of escalating consequences for violating company policies. While termination should always be included as an immediate option under such policies, this approach gives employees the opportunity to learn from their mistakes and improve their behavior.

- **Training and Education:** Employers will do themselves a service by letting all employees know from the first day they walk in the door what will and will not be tolerated in the workplace. There should be no doubt about workplace expectations and what type of behavior will get you fired. Providing employees with notice, training, and continuing education on company policies, workplace expectations, and acceptable behavior can go a long way in preventing violations from occurring in the first place.
- **Positive Reinforcement:** Rather than focusing solely on punishing negative behavior, employers should use positive reinforcement to encourage positive behavior – catch folks doing good. This approach involves rewarding employees for meeting or exceeding expectations and demonstrating desirable behaviors.
- **Open Communication:** Creating an environment where employees feel comfortable expressing their concerns and asking for help can help prevent violations from occurring. Employers can implement an open-door policy, hold regular meetings to address concerns, and provide on-going feedback. Employers should also be sure to encourage employees to report any issues they may be facing so things aren't allowed to fester and then suddenly explode.

Conclusion

The key to implementing alternative approaches to zero-tolerance policies is to focus on creating a culture of trust, transparency, and accountability. By providing employees with the tools, resources, and support they need to succeed, employers can create a more positive and productive work environment while also addressing any policy violations that may occur.

And if you don't know, now you know – reader.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.