

New Jersey Supreme Court Holds That Two Highly Offensive Comments Could Trigger Employer Liability Under the New Jersey Law Against Discrimination

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Last month, the New Jersey Supreme Court issued an important decision concerning whether or not a supervisor's use of two offensive racial slurs could support a hostile work environment claim under the New Jersey Law Against Discrimination (LAD). [Rios v. Meda Pharm, Inc.](#), 2021 N.J. Lexis 553 (2020).

The facts of this important case are straightforward. Plaintiff, Armando Rios, Jr., a Hispanic man, was hired by Defendant, Media Pharmaceutical, Inc. (Media) in May 2015. Defendant, Tina Cheng-Avery was Rios' direct supervisor. Rios asserted that Cheng-Avery used the highly offensive term, "spick" towards him at their place of work. Rios immediately reported the same to Media's Director of Human Resources after each incident. She denied making the highly offensive comments to Rios. Cheng-Avery placed Rios on probation in February of 2016, citing "poor performance" and terminated his employment in June, 2016. Rios filed a complaint alleging that the defendants violated the LAD, by creating a hostile work environment.

The New Jersey Supreme Court found that the alleged use of the term "spick" has no place in a work setting. The Court held that the term "is a derogatory word for Mexicans, Mexican Americans, and Puerto Ricans that also expanded to encompass other Hispanic groups, including Central Americans, South Americans, and Caribbeans." Moreover, the Court found that Cheng-Avery's position as Rios' supervisor compounded the severity of the alleged remarks. The Court found that under these circumstances, the two alleged comments, viewed from the perspective of a reasonable Hispanic employee, could taint every interaction that followed between an employee and their direct supervisor.

The Court also took issue with the fact that Rios reported the two incidents to the company's Human Resource department per the company's policies, but the director of Human Resources was "dismissive" and took no action. The Court found that, if Rios brought the matter to the company's attention, he gave it an opportunity to remedy the situation.

The Rios decision is extremely important and teaches employers a number of lessons. First, one or two highly offensive comments made by a supervisor to an employee may trigger a violation of the New Jersey LAD. Employers should communicate the same in their recommended yearly anti-

discrimination training and address it in their written anti-discrimination policies. Moreover, Human Resources and supervisors must take reports of alleged discrimination extremely seriously. Had the employer in this case conducted an investigation and taken reasonable, effective remedial steps to address Rios' complaints, it is extremely unlikely that the case would have proceeded. Finally, although not specifically addressed in the decision, employers need to be extremely careful when terminating an employee who asserts that they have been subjected to unlawful discrimination. Terminating an employee who reports or supports another employee's discrimination claim may constitute actionable "retaliation" under the LAD.

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