

Single Use of Racial Slur Sufficient to Assert Harassment Claim

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In a recent decision, the U.S. Court of Appeals for the Third Circuit held that a single use of a derogatory term can sustain a workplace harassment claim. In [*Castleberry v. STI Group and Chesapeake Energy Corporation*](#), the parties disputed whether or not a single use of a racial slur could be “severe” enough to support the plaintiff’s claim of harassment and survive a motion to dismiss.

The plaintiffs, two African-American employees, brought claims for harassment, discrimination, and retaliation after they were terminated for reporting that a supervisor told them they would be fired if they “n***er-rigged” a fence they were working on. The employers filed a motion to dismiss and argued that a single, isolated incident could not support the plaintiffs’ claims. The U.S. District Court for the Middle District of Pennsylvania granted the employers’ motion to dismiss and concluded that the plaintiffs were required to show their treatment was “pervasive and regular.” On appeal, the plaintiffs argued the appropriate standard was “severe or pervasive” and that a single use of the racial slur met that standard.

The Third Circuit agreed with the plaintiffs. It acknowledged the muddled precedent in its jurisdiction: some courts relied on “severe and pervasive,” while others relied on “pervasive and regular” or “severe or pervasive.” It clarified that the correct standard in these types of cases is, in fact, “severe and pervasive,” and rejected the lower court’s holding that the harassment must be regular to state a viable claim. The Third Circuit relied on the “severe or pervasive” standard and U.S. Supreme Court decisions abandoning the “regular” requirement. Under the “severe or pervasive” standard, the single use of a racial slur is sufficient to sustain a claim for harassment at the motion to dismiss phase.

This case, and many others from various jurisdictions, tends to show that employers need to consider protecting themselves by having clearly defined policies, ensure that their workforces undergo continual training, and even consider additional training for managers and supervisors. By putting these appropriate safeguards in place, employers may decrease the likelihood of liability and lawsuits.

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