



Two Recent Court Decisions Impact The Investigation of Employee Discrimination Complaints

By Sara G. Sidwell

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The U.S. Equal Employment Opportunity Commission has been ordered to pay over \$1 million in attorney fees to a Pasadena law firm following the EEOC's unsuccessful suit against the firm for pregnancy discrimination and sexual harassment. In a ruling filed January 13, 2006, Federal Judge Dickran Tevrizian of the U.S. District Court for the Central District of California found that the EEOC had filed a "frivolous" lawsuit against Robert L. Reeves and Associates.

Judge Tevrizian determined that the EEOC failed to adequately investigate the allegations, interviewing only one of the 12 claimants in the case. Tevrizian found that the EEOC had instead relied on the accounts of three "clearly-biased individuals" who used the EEOC in their "campaign to destroy" the firm and Reeves. The court found that the evidence at trial showed that the EEOC either "knew or inexcusably failed to deduce that it was being used as a weapon." The court further found that the EEOC "sought to parlay a few isolated jokes and comments into bad faith, exaggerated allegations of a hostile work environment."

The court also found that the EEOC behaved improperly during the discovery phase of the case by asking for irrelevant and improper information, refusing to provide Reeves with even the "basic factual allegations" regarding certain claims, and attempting to obtain discovery directly from current and former employees in a manner that bordered on harassment.

The United States Supreme Court has held that an employer's use of the term "boy" when referring to an African-American employee, however, is sufficient evidence of discrimination to sustain a judgment against an employer. The decision in *Ash v. Tyson Foods, Inc.* overruled an Eleventh Circuit Court of Appeals decision that had determined that the use of "boy" was only discriminatory when modified by a racial classification such as "white" or "black."



Alec J. Beck
Robin N. Kelleher
Shareen R. Luze
Gregory L. Peters
Thomas R. Revnew
Megan M. Ruwe
Douglas P. Seaton
Sara G. Sidwell
Tana S. VanGoethem
Robert Grossman,
of counsel

7300 Metro Blvd, #500
Minneapolis, MN 55439
Tel 952-896-1700
Fax 952-896-1704
www.seatonlaw.com

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In the opinion, the Court found that although a term such as “boy” will not always provide evidence of racial animus, the term, standing alone, is not always benign. The Court noted that the speaker’s intent may depend on other factors such as tone of voice, context, inflection, local custom, and historical usage of the term at issue.

The *Reeves* decision clearly puts the EEOC on notice that it must thoroughly investigate all claims that it chooses to litigate rather than rely on self-serving witnesses and exaggerated allegations. Further, it may not harass employees and other witnesses in the course of its investigation. Employers may obtain relief if the EEOC fails to do so, although such results are not assured, even for frivolous cases, and depend on the disposition of the individual judge. The *Ash* decision is probably a better guide to practical employer action. *Ash* clearly shows that all discrimination complaints should be treated as a serious matter and should be promptly investigated. All complaints, even apparently frivolous complaints, such as the one the EEOC pursued in *Reeves*, can be costly if not handled properly at the outset. Employers can manage their exposure to such claims by carefully drafting non-discrimination and complaint policies, by promptly and thoroughly investigating all discrimination claims, and by taking whatever action they deem appropriate in response, with ad-

vice of counsel. Employers who do will almost always avoid or substantially reduce exposure because investigation and appropriate action are themselves defenses to most discrimination charges, even when there is a legal basis for the complaint in the first place.

For more information regarding these issues and their impact on your business, please contact the law firm of Seaton, Beck & Peters, P.A. at (952) 896-1700 and ask for any available attorney. We would be happy to assist you.

Are Your Employee Handbook And Employment Documents Protecting Your Firm Or Putting You At Risk?

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