



CLIENT ALERT

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THE SEVERITY OF A SINGLE SLUR

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On July 14, 2017, the United States Court of Appeals for the Third Circuit held that a single slur could be severe enough to support a hostile work environment claim. *Castleberry v. STI Group*, No. 16-3131 (3d Cir. 2017).

Castleberry and Brown, two African-American males, were employed by STI Group, a staffing-placement agency, which placed them to work at Chesapeake Energy Corporation. They alleged that, while working on a fence-removal project, their supervisor told them that if they “n----- - rigged” the fence, they would be fired. Several weeks later, and after they complained about the incident, Castleberry and Brown were, in fact, terminated. They sued STI and Chesapeake for harassment, discrimination, and retaliation in violation of 42 U.S.C. § 1981, which prohibits race discrimination in the making and enforcing of contracts. Because Castleberry and Brown could not point to a pattern of harassment, the United States District Court for the Middle District of Pennsylvania dismissed their claim.

Last month, the Third Circuit admitted it had muddied the waters in prior rulings, which held either that harassment must be “severe and pervasive,” “severe or pervasive,” or “pervasive and regular.” So, in reversing the district court, the

Third Circuit announced that the proper standard is “severe or pervasive.” The Court noted that “some harassment may be severe enough to contaminate an environment even if not pervasive; other, less objectionable, conduct will contaminate the workplace only if it is pervasive.” In holding that an extreme isolated act of discrimination, such as using a racial epithet, can create a hostile work environment, the Third Circuit joins the Second, Fourth, Seventh, Eleventh, and D.C. Circuits.

Employers in Pennsylvania, New Jersey, and Delaware must act proactively to address discriminatory conduct in the workplace before it becomes pervasive. Even if they do, the Third Circuit has made clear that a *single* highly offensive remark may be enough to support a hostile work environment claim. This decision emphasizes the importance of effective anti-harassment training and adequate personnel policies.

Please contact Patricia Tsipras, Esq. at [610.408.2029](tel:610.408.2029) or ptsipras@rubinformunato.com to discuss this article, general topics related to employment law, or the impact this decision may have on your business’s policies or training.