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District Court: In Employment Discrimination Cases, Context Matters

A recent constructive discharge decision from the Eastern District of Pennsylvania involving the use of the N-word highlights the importance of “factual nuances and context” in employment discrimination cases.

By **Jeffrey Campolongo** | September 20, 2018



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A recent constructive discharge decision from the Eastern District of Pennsylvania involving the use of the N-word highlights the importance of “factual nuances and context” in employment discrimination cases, see *Hite v. Manor Junior College*, Case No. 17-CV-131 (GAM) (E.D. Pa. Mar. 29, 2018) (McHugh, J.). The court relied on a host of prior cases to emphasize just

how much context matters, particularly in issues involving race. The real social impact of workplace behavior, the court wrote, often depends on a constellation of

surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of the words used or the physical acts performed, (citing *Burlington North & Santa Fe Railroad v. White*, 548 U.S. 53, 69 (2006)).

The context in this particular case involves plaintiff, Deborah Hite, who worked as an admissions counselor for defendant Manor College for about eight months. Hite resigned claiming she was subjected to a hostile work environment, racially based disparate treatment, and retaliation by Manor College and her supervisor, defendant John Dempster. The gravamen of her complaint is that she was the only African-American woman in her department and felt that she was resented from the moment she began the job because she was paid more than her white colleagues. Her supervisor, defendant Dempster, insinuated that Hite was hired based on her race, rather than on merit. In an email with Manor's human resources director, Dempster wrote that Hite had been hired because Manor "needed an African-American woman in the office."

Among the myriad of other racially charged incidents, Hite alleged that a co-worker, who was not African-American, continually used the N-word in Hite's presence and frequently played music at a loud volume that included the N-word. Hite followed her employer's harassment and discrimination protocol by frequently expressing concerns to HR, defendant Dempster, and other superiors, to no avail. At one point, according to the opinion, the limited investigation done by HR consisted of asking the co-worker if he actually used the N-word, which he denied. The denial immediately ended the investigation deeming it "unfounded."

During her employment, Hite applied for a promotion, albeit unsuccessfully, and voiced her concerns to HR that she would be forced to leave if conditions did not improve. Hite was even disciplined by defendant Dempster for carbon-copying the HR director on emails she sent to Dempster, despite the HR director having invited Hite to do so. Eventually, Hite resigned following a run in with Dempster. In doing so,

she submitted a letter of resignation citing the ongoing harassment and discrimination as her reason for leaving. She was escorted out of the building by security the day after she delivered the resignation letter to Manor's dean.

In moving for summary judgment on all of Hite's claims, Manor made some questionable arguments, including some that baffled the district judge. Manor first argued that the co-worker's alleged use of the N-word was barred by the 300/180 day statutes of limitations. In quickly disposing of this argument, the court reminded employers that the Supreme Court has made clear that, even where the statute of limitations prevents a plaintiff from asserting a claim based on a discrete discriminatory act, the statute does not "bar an employee from using the prior act as background evidence in support of a timely claim," see *National Railroad Passenger v. Morgan*, 536 U.S. 101, 113 (2002).

The point being made, again in context, is that use of a single racial epithet is still relevant and admissible even if the lone incident itself is not actionable. The district court opinion reiterated the longstanding principle that a hostile work environment claim is composed of a series of separate acts that collectively constitute one unlawful employment practice. The same holds true, if not more so, in a constructive discharge case, the court wrote.

Defendants also offered the head-scratching argument that if the workplace were truly hostile, Hite would not have stayed as long as eight months nor sought a promotion and would have quit when she first threatened to do so. If conditions were so intolerable, Manor argued, then Hite should have quit without notice. The problem with such an argument is that it runs completely counter to U.S. Court of Appeals for the Third Circuit precedent. A reasonable employee will usually explore alternative avenues thoroughly before coming to the conclusion that resignation is the only option, as recited in *Clowes v. Allegheny Valley Hospital*, 991 F.2d 1159, 1161 (3d Cir. 1993). The fact that an employee remains in a position while being subjected to continuous discrimination could signify that the employee simply had had enough, see *Aman v. Cort Furniture Rental*, 85 F.3d 1074, 1084-85 (3d Cir. 1996).

Furthermore, the Third Circuit has held that the length of time that an employee remains in an abusive workplace, be it months or even years, does not foreclose a hostile work environment claim, as in *Abramson v. William Paterson College of New Jersey*, 260 F.3d 265, 279-80 (3d Cir. 2001). The district court applied a rarely used standard by suggesting that the “sum total of abuse over time” is what is key to a jury’s understanding of the case. Here, Hite’s eight months of “abuse” was more than sufficient to warrant jury consideration.

Last, and certainly not least in the eyes of the district judge, the defendants’ argument that the complained-of conduct was not “based upon her race,” was deemed to be an antiquated view of discrimination law. Defendants sought to undermine the intentional discrimination prong of Hite’s claims by asking the court to ignore context and consider only direct evidence of overtly racial discrimination. The defendants even contended that use of the N-word cannot be considered “racially motivated” because it was “not directed” to Hite. The court was having none of that argument. Describing the hateful word as the “paradigmatic slur” toward African-Americans and the “most socially consequential insult,” the court flatly rejected this argument.

Moreover, the court described how the use of more subtle forms of discrimination has made it easier to coat discrimination with the appearance of propriety. Rarely does a paper trail exist, nor will defendants of even minimal sophistication admit discriminatory animus. The job of the courts is to be “increasingly vigilant in their efforts to ensure that prohibited discrimination is not approved under the auspices of legitimate conduct, and a plaintiff’s ability to prove discrimination indirectly, circumstantially, must not be crippled ... [by] crabbed notions of relevance or excessive mistrust of juries.” The court went on to list several examples of cases where the context, nuance and discrete circumstances were necessary to understand the insidiousness of discrimination.

The *Hite* decision is an excellent reminder of why context matters. It is said time and time again in hostile work environment cases, that a play cannot be understood on the basis of some of its scenes but only on its entire performance. Similarly, a discrimination analysis must concentrate not on individual incidents, but on the overall scenario.

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