

# The Legal Intelligencer

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COMMENTARY

## EEOC Stepping Up Enforcement of Racial Harassment Claims

A recent spate of harassment lawsuits by the Equal Employment Opportunity Commission (EEOC) shine a light on the pervasiveness of workplace racism and bigotry, some of which is taking place right in our own backyard.

By **Jeffrey Campolongo** | September 17, 2021



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A recent spate of harassment lawsuits by the Equal Employment Opportunity Commission (EEOC) shine a light on the pervasiveness of workplace racism and bigotry, some of which is taking place right in our own backyard. In a Sept. 14 [press release](#) issued by the EEOC regarding the lawsuits, the agency said that workplace racism “remains a pervasive problem that exists out in the open to be seen by anyone who bothers to look.”

In 2020, charges filed with the EEOC alleging discrimination or harassment because of a person's race or color made up more than one-third of all complaints the agency fielded. Out of 67,448 overall cases filed with the agency, over 25,000 were on the basis of race/color. Apart from retaliation claims, claims of race discrimination continue to be the single highest number of claims of all the protected classes. On a local level, race cases made up 27.9% of the filings with the EEOC's Philadelphia office and 14.8% of cases filed with the Pennsylvania Human Relations Commission (PHRC).

As we know, however, the numbers do not always tell the whole story. Not every case gets pursued and not every case gets filed. Anecdotally, in our firm alone, the percentage of intakes alleging race discrimination claims continues to hover around 50% on an annual basis. That's why, in the view of this commentator, the recent filings by the EEOC are no surprise.

## **EEOC Lawsuit Against a Local Business**

The EEOC has targeted a business in Chalfont, Pennsylvania accusing it of racial harassment. The case is against Eureka Stone Quarry, Inc. and James D. Morrissey Inc. (JDM), affiliated Pennsylvania-based companies engaged in mining and sales of sand, stone and other materials and construction operations. The matter was filed in the U.S. District Court for the Eastern District of Pennsylvania (*Equal Employment Opportunity Commission v. Eureka Stone Quarry and James D. Morrissey*, Civil Action No. 2:21-cv-04060).

According to the lawsuit, an African American heavy equipment operator at the companies' quarry, was subjected to egregious racial harassment by co-workers for several years, including commonplace use of racial epithets such as "n\*\*\*\*r," threats of violence directed at the Black Lives Matter movement, and other offensive statements that reflected racial bias and stereotypes. Among the allegations contained in the detailed complaint, is that the harassment became increasingly severe over time eventually culminating in the worker being threatened by the harasser with a firearm.

Harold Powell began his employment at the Pocono Quarry located near Chalfont in March 2016 as an operator (loader). From 2016 to 2019, Powell's co-workers subjected him to a continuing course of racial harassment. The main harasser, according to the complaint, was Powell's co-worker Francis J. Bednarek who frequently used the "N" word to describe Powell and other Black persons. At one point, Powell overheard Bednarek say, "F\*\*k that n\*\*\*\*r" referring to Powell.

Bednarek's alleged harassment did not stop there. He would routinely play racist podcasts and broadcast them over the quarry's CB radio channel for everyone to hear, including Powell who took obvious issue with the bigoted content. The podcasts made references to Blacks eating chicken and watermelon and Bednarek joked about dressing up like a member of the Ku Klux Klan, while also denigrating Hispanics as "stupid wetbacks." Powell's daughter, who is Hispanic, is something that Bednarek knew, according to the suit. There were also repeated comments likening Blacks to monkeys and Blacks communicating with "clicking sounds."

At one point in July 2020, following the murder of George Floyd, Bednarek told Powell that he was "ready" for the race war, that George Floyd was a "n\*\*\*\*r" who "deserved it," and that if Black Lives Matter protestors wanted to "riot" he [Bednarek] was "ready for it." Powell was subjected to harassment by other co-workers as well, including allegations that

he was called "you f\*\*\*ing n\*\*\*\*r" on one occasion and a joke suggesting that Powell's White co-worker was Powell's "master." The most dangerous incident was one in which Bednarek fired multiple shots from a rifle on company property while Powell was nearby in an attempt to threaten and intimidate Powell.

Despite repeated complaints to supervisors, human resources and others in the company, no action was taken to remedy the situation and Powell eventually resigned due to the ongoing harassment. After complaining to his supervisor about the harassing broadcasts over the CB, Powell's boss demanded that Powell "prove" that Bednarek was doing it before he would take any action. The lawsuit indicates that no remedial action was taken. Notably, the complaint alleges that Bednarek was eventually fired but not for reasons relating to his harassment of Powell. Bednarek was fired for purportedly making sexual comments about a co-worker's spouse, an individual who did not work for the company.

## **The Other EEOC Lawsuits**

The EEOC filed another racial harassment case against Coastal Drilling East (Coastal Drilling), a Pennsylvania-based company that provides geotechnical construction services in the natural gas industry. According to the lawsuit, an African American rig hand at Coastal Drilling's Graysville site was subjected to severe racial harassment by his co-workers, including being handed a noose, open display of nooses on other occasions, and persistent use of racial epithets such as "n\*\*\*\*r" in reference to himself and other Black persons. Eventually the worker was forced to resign his employment, according to the lawsuit. This suit was filed in U.S. District Court for the Western District of Pennsylvania (*Equal Employment Opportunity Commission v. Coastal Drilling East*, Civil Action No. 2:21-cv-01220-JFC).

In a third lawsuit filed in U.S. District Court for the Northern District of West Virginia, the EEOC sued UFP Ranson, a lumber manufacturer located in Jefferson County, West Virginia. (*Equal Employment Opportunity Commission v. UFP Ranson*, Civil Action No. 3:21-cv-00149-GMG). UFP Ranson is a subsidiary of UFP Industries, Inc., a publicly traded corporation headquartered in Michigan with approximately 170 facilities worldwide. According to the lawsuit, UFP Ranson subjected a class of Black workers to severe racial harassment in the form of racial epithets such as "n\*\*\*\*r," other racially offensive statements, and, in at least one instance, threats of violence involving firearms. The EEOC also charged that a manager at UFP Ranson deliberately sought to force African American workers to quit their jobs, and the company created more onerous working conditions for Black workers relative to their white peers. One African American worker who is Muslim was also subjected to religious harassment and was eventually subjected to racially discriminatory and retaliatory discharge, according to the lawsuit.

## **'Anyone Who Bothers to Look'**

In reflecting on these cases and the strategic decision to bring them all at the same time, it's clear the EEOC is trying to send a stern warning about workplace harassment. Last year, the agency only filed a total of 97 lawsuits, 59 of which were under Title VII. Monetary settlements in FY2020 on behalf of EEOC claimants was over \$106 million. It is fair to say that when the EEOC decides to pull the trigger on a lawsuit, the agency means business. But like EEOC regional attorney Debra Lawrence said in the press release, "those of us who enforce federal anti-discrimination laws everyday know that on-the-job racial bigotry has not gone underground. Rather, it remains a pervasive problem that exists out in the open to be seen by anyone who bothers to look."

**Jeffrey Campolongo** *is the founder of the Law Office of Jeffrey Campolongo, which, for over a decade, has been devoted to counseling employees, working professionals and small businesses in employment discrimination and human resource matters.*

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