

Employee's Failure to Report Renewed Harassment Fatal to Racial Harassment Claim

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A black employee claimed that two of his co-workers started taunting him with racial epithets soon after he was hired. In accordance with the company's anti-harassment policy, the employee complained to the company owner. The company owner immediately berated the two co-workers and warned that further harassing incidents would result in immediate termination. One of the co-workers continued to use racial epithets. The employee then complained to another worker, but never reported the later incidents to the owner. The employee sued, alleging that the employer violated Title VII of the Civil Rights Act of 1964, as amended (Title VII), for failing to address his co-workers' continued use of racial epithets. The employee argued that the employer was liable for two distinct failings: (1) inadequate discipline following the initial harassment; and (2) failure to address the later harassment—of which the employer had notice through the employee's complaints to the other worker. The U.S. Court of Appeals for the First Circuit rejected the employee's arguments and held that "when co-workers, rather than supervisors, are responsible for the creation and perpetuation of a hostile work environment . . . an employer can only be liable if the harassment is causally connected to some negligence on the employer's part." The court ruled that the employer's response to the initial harassment was "swift and appropriate" and that the employee's failure to report to the company owner, as ordered, was "fatal to his claim of employer liability." Employers should adopt an anti-harassment policy that makes clear whom the employee must notify about harassing incidents. By ensuring a swift and initial response to harassment, and a clear directive as to whom employees must notify of current and further harassing incidents, employers will be able to defend against any subsequently filed lawsuit.

Wilson v. Moulison N. Corp., Case No. 10-1387 (1st Cir. Mar. 21, 2011)

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