

Employee's Emotional Distress Claim Not Pre-empted but Not Actionable Emotional Distress Either

1 min read

Sep 1, 2017

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The United States Court of Appeals for the 7th Circuit recently addressed whether common law tort claims arising during the employment relationship are pre-empted by the Illinois Human Rights Act simply because they share similar fact patterns to claims of discrimination or harassment in [Richards v. U.S. Steel](#). The answer is no.

Before that answer strikes fear in employers, the opinion does not change precedent that claims of discrimination and harassment are indeed limited to the procedural and remedial provisions of the Illinois Human Rights Act (IHRA) itself. In other words, a charge of discrimination or harassment does not, without more, give rise to tort liability.

In *Richards*, Plaintiff claimed that supervisory bullying and harassment supported her cause of action for intentional infliction of emotional distress. US Steel claimed IHRA preemption, but the Court disagreed, noting that neither the IHRA nor the Illinois Supreme Court have held that such preemption is absolute. Rather, courts need to evaluate the conduct to see if it establishes the elements of the tort. As the court noted, Illinois common law “pays special care to avoid transforming employer-employee disagreements into an emotional-distress claim.” Ultimately, Richard’s tort claim failed because the conduct involved (pulling open her jacket, joking about her weight, and directing sexually charged comments at her), though disrespectful, was not so extreme and outrageous as to constitute emotional distress.

From a practical standpoint, employers should promote a workplace free from harassment, discrimination, bullying and other negative behavior. In this way, it will guard against statutory claims of harassment and discrimination and reduce the likelihood that an employee could sustain a claim of intentional infliction of emotional distress. On dispositive motions, defense counsel should argue both preemption and address the elements of the tort claim. A preemption argument alone may not always fly under the *Richards* to knock out the tort claim.

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Topics

Sexual Harassment, Harassment, Preemption, Illinois Human Rights Act, Emotional Distress, Workplace Bullying, Extreme Or Outrageous