

Being Called a Racist Is Not Unlawful Harassment If Comments Are Not Racially Motivated

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Employers are equipped and know how to handle complaints of racial discrimination and harassment—or at least should be so prepared. However, facts have a funny way of developing into novel situations. What happens, for instance, if an employee is being *called* a racist by other employees?

Shining a light on this question is [Squitieri v. Piedmont Airlines, Inc.](#), a recent district court decision in the United States District Court for the Western District of North Carolina. In *Squitieri*, an employee posted a comment about the Black Lives Matter movement on her personal Facebook page. The employee noted that she supported law enforcement, but—be forewarned—she used inflammatory language to support her position. Paraphrasing her comments misses some of the obvious controversy these posts may have caused, so it is worth reviewing her actual posts. First, she wrote:

I have 2 brothers and 2 sisters-in-law that are law enforcement. I don't want to see any more of your bullsh*t posts about cops! There's good an [sic] there's bad — when you need them they come and you're damn glad! I don't care what color you are — stop jumping the bandwagon! Very simply — don't put yourself at the end of a cops [sic] gun! You're black so what, I don't give a sh*t — don't mean ya [sic] can run your mouth and get on your soap box just because you share skin color! Shut up already!

She later added the following comment:

All lives matter. Period. I will not be preached to. I never said Black lives dont [sic] matter. I believe Black lives matter is stoking the fire of racial tension and hate by exploiting deaths and encouraging division. Period. Look again at my words and do not put words in my mouth.

Coworkers and union officials read these comments, and subsequently began to post comments about the employee on other social media and at work, calling the employee a racist. She complained to the company and eventually filed suit against her employer and several individuals. The suit alleged Title VII racial disparate

treatment and harassment and §1981 racial discrimination and harassment. The suit also alleged defamation, which is not addressed here.

The district court granted a motion to dismiss the Title VII and §1981 harassment claims. The allegations fell short of a number of required elements for stating a claim. Those elements subsection to unwelcome harassment, because of her race, and that is sufficiently severe or pervasive to alter the terms and conditions of employment. The conduct must be both subjectively and objectively offensive.

The court held that the complaint provided no basis for it to conclude that the comments about the employee being “racist” were racially-motivated. The court explained: “stating that Plaintiff is a ‘racist’ is not racial on its face and is not related to Plaintiff’s race.” This was especially so because the timing showed that the comments were clearly the result of the employee’s Facebook posts and not her race (which, incidentally, is not disclosed in the ruling). The court also noted the complaint alleged no facts suggesting the comments were objectively offensive, even if they were subjectively offensive to the plaintiff. For instance, the employee only alleged three specific incidents where coworkers called her a racist, and so there was no support for an allegation that the comments interfered with her work or were severe or pervasive.

As a further cautionary tale to employers, a small change in the facts could potentially have resulted in an entirely different outcome. For instance, had the employee been called a racist in some way that also implicated her race or other protected class (think, e.g., “racist white girl”) and if the charge had more clearly listed specific incidents—the harassment claims may have survived the motion to dismiss. Despite the positive outcome here, employers must nevertheless continue to be vigilant in their enforcement of harassment and discrimination policies.

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Topics

Title VII, Harassment, Social Media, Racial Harassment, Title VII Of The Civil Rights Act Of 1964, Anti-Discrimination Policy, Anti-Harassment Policy, Black Lives Matter, Disparate Treatment, Racial Discrimination, Severe And Pervasive, Objectively Offensive, Subjectively Offensive