

Race Discrimination: Court Awards Damages To Caucasian Nurse Who Was Harassed On The Job By African-American Co-Workers.

The US District Court for the District of Delaware awarded damages in excess of \$220,000 to a Caucasian LPN, finding that she was subjected to on-the-job harassment by African-American co-workers and managers based on her race, to the point she was forced to resign and find other employment.

In making its ruling the court reviewed many of the general principles that apply across the board in employment race discrimination cases.

Racial Harassment

The court found evidence of a racially hostile work environment. The LPN was routinely referred to by co-workers as a “white girl” and comments were made in stage whispers behind her back that all whites “smell like colostomy bags.” Reportedly the LPN’s co-workers started an office pool as to the date she would resign as a result of discriminatory treatment.

Differential Discipline

The court noted, without elaborating on the details, that the LPN in question received verbal reprimands and had formal written warnings placed in her personnel file for conduct for which African-American nurses were not disciplined.

Other Caucasians Were Harassed

Racial harassment was directed at other Caucasian employees before the LPN was hired and during her employment, a fact accepted by the court as evidence that a racially hostile work environment existed at the facility and was tolerated by facility management.

LPN Complained Before Resigning

Co-worker harassment, as a general rule, to serve as grounds for a discrimination lawsuit, must be reported to facility management.

After the harassment is reported management is entitled to reasonable time to investigate and rectify the situation and must fail to do so if the victim is to have grounds to sue.

The court ruled the LPN did all she could by way of complaints before the actually resigned.

Damages in the form of back pay are available to a victim of on-the-job race discrimination who has been constructively discharged, that is, forced to abandon his or her employment.

Back pay is calculated as the difference between the actual income the individual has earned up to the court date subtracted from the amount the individual would have earned but for the employer’s discriminatory conduct.

Damages for emotional distress require evidence of actual injury. Sleeplessness, headaches, humiliation and embarrassment, although intangible, are considered actual injuries.

Punitive damages can be awarded to a victim of discrimination if the employer engaged in discriminatory practices with actual malice or with reckless indifference to the victim’s rights as protected by Federal law.

Here the defendant employer ignored the victim’s complaints and had been aware of similar complaints from other Caucasian employees.

UNITED STATES DISTRICT COURT
DELAWARE
October 27, 2008

Constructive Discharge

Constructive discharge is the legal term for an employee being forced to resign as a result of on-the-job victimization by the wrongful conduct of a manager, supervisor or co-workers.

Constructive discharge is the opposite of voluntary resignation. As a general rule employees who resign voluntarily and then take less desirable or lower paying employment cannot claim their losses are the former employer’s liability.

In this case the LPN was off work altogether for several months, then took a job paying \$3.75 per hour less than what she was earning.

The accumulation of damages for the pay differential ceased, the court ruled, when the defendant facility closed, that is, when the nurse would have been laid off in any event.

Mental Anguish, Emotional Distress

Professional treatment for emotional problems or for mental health issues is not a legal prerequisite to a discrimination victim being entitled to compensation for mental anguish and emotional distress.

In this case the LPN did seek medical attention for stomach problems and was prescribed medication for a sleep disorder, and her physicians could relate these issues to embarrassment, anxiety and depression from her job situation.

The court awarded \$100,000 out of the total judgment for this component of the case alone, along with \$736.00 for medical bills.

Attorney Fees

The US Civil Rights Act and many state anti-discrimination laws allow the court to award damages to the victim for attorney fees. This is meant to permit access to justice for those who cannot afford an attorney and to prevent diminution of the recovery for a contingency fee.

In this case the facility defaulted and there was no trial. The attorneys nevertheless did have to submit uncontested proof of the claim and were given \$12,000+. **Reczek v. JHA Wilmington, 2008 WL 4723021 (D. Del., October 27, 2008).**