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\$3.5 Million in Punitive Damages Awarded for Hostile Environment

9/24/2012

By Adam R. Gardner

The creation of a hostile work environment, which persisted over the course of three years and resulted in an employee experiencing over 70 incidents of harassment, merited the reinstatement of a \$3.5 million punitive damages award against an employer, the 7th U.S. Circuit Court of Appeals held.

Chrysler Group LLC employed Otto May Jr. as a pipefitter at its plant in Belvidere, Ill. Between 2002 and 2005, May—a Cuban-born Jew—claimed to have experienced more than 70 incidents of racist and bigoted harassment, including death threats, damage to his personal property and derogatory notes and graffiti.

May complained to Chrysler about the hostile work environment, and within one year of his initial complaint in 2002, the company responded with the following actions:

*Chrysler held a meeting at the Belvidere plant for 60 employees to remind them of the company's anti-harassment policy. The plant, however, employed more than a thousand individuals.

*A company representative met with May and requested the names of the individuals he suspected of committing the harassing conduct. May provided this list, but Chrysler failed to interview those listed.

*Chrysler representatives attempted to analyze plant entry and exit data to determine who worked at the times when the harassment occurred.

*Chrysler implemented a protocol to document and collect evidence of harassing conduct on a going-forward basis.

*To determine who wrote the derogatory notes to May, Chrysler retained a forensic document examiner to analyze handwriting, but the results were inconclusive.

May found Chrysler's response perfunctory, because the harassing conduct did not cease between 2002 and 2005. Further, a conflict of interest existed in connection with Chrysler's treatment of May's complaints. A Chrysler human resources employee failed to recuse herself from the investigation when her husband (also a Chrysler employee) was identified as a suspect.

Eventually, May filed a lawsuit against Chrysler, but only his hostile work environment claim went to trial. He won significant compensatory damages and \$3.5 million in punitive damages. At the conclusion of the trial, however, the district court ordered the dismissal of the punitive damages award.

On appeal, the 7th Circuit upheld the jury's determination that Chrysler was liable for creating a hostile work environment, and it reinstated the punitive damages award.

In upholding Chrysler's liability, the 7th Circuit found that the jury was presented with ample evidence to support its finding that Chrysler did not "promptly and adequately" respond to the harassment of May. "Especially in light of the gravity of the harassment, the jury was presented with more than enough evidence to conclude that Chrysler had not done enough," said the 7th Circuit.

In reinstating the punitive damages award, the 7th Circuit held that the jury was presented with sufficient evidence to determine that Chrysler acted recklessly in responding to May's harassment. The court noted again that Chrysler's response was "shockingly thin." Further, as the harassing conduct persisted over three years, Chrysler failed to strengthen its response measures, according to the 7th Circuit. "May's harassment continued for years, the threats extremely serious, and there was scant evidence of an increased effort over time" by Chrysler to ameliorate the harassment, said the appellate court.

May v. Chrysler Group, LLC, 7th Cir., No. 11-3000 (Aug. 23, 2012).

Professional Pointer: The *May* case is an important reminder that each complaint of harassment should be taken seriously. Prompt and comprehensive response and investigation is crucial. If response and investigation efforts do not curb the harassing conduct initially, employers should progressively strengthen their efforts until the matter is resolved fully.

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