

## NEWS ALERT

# LABOR & EMPLOYMENT



## A Single Racist Comment Can Create a Hostile Work Environment

By Salvatore G. Gangemi | May 1, 2017

*On April 25th, the United States Court of Appeals for the Second Circuit, which covers New York, Connecticut and Vermont, clarified that a single incident can suffice to state a claim for a discriminatory hostile work environment in the workplace.*

The Second Circuit also confirmed that a court can consider facially neutral incidents (i.e., incidents, which, when taken in isolation, do not point to unlawful discrimination) in determining whether employment discrimination has occurred.

In *Daniel v. T&M Protection Resources, Inc.*, the plaintiff alleged that he was discriminated against because of his race, sex and national origin. The district court granted summary judgment dismissing the racial harassment claim, which was based only upon a single incident in which the plaintiff's supervisor called him "nigger." The Court of Appeals, however, disagreed, stating that although generally a single racial slur might not be enough to create a hostile work environment, the one-time use of a "severe racial slur" might.

Whether or not a hostile work environment exists depends upon whether conduct is severe or pervasive. It need not be both. As the Court of Appeals observed a few years ago, "perhaps no single act can more quickly alter the conditions of employment and create an abusive working environment than the use of an unambiguously racial epithet such as 'nigger' by a supervisor in the presence of his subordinates."

The Court of Appeals also found that the district court erred by failing to consider some "facially neutral" incidents that could have bolstered the plaintiff's racial harassment claim. For example, the same supervisor who used the racial slur had previously asked the plaintiff whether he had stolen a computer. Although facially neutral, the inquiry could have supported a claim for racial harassment when considered together with the supervisor's racist remark.

The Court's opinion reminds us that there can be no checklist approach to investigating employee claims of discrimination; a determination of discrimination depends on the totality of the

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circumstances. Context is as important as the complained-of conduct. Employers must be vigilant about creating work environments that are free of harassment. Regular training is one method to keep your workforce reminded of employer expectations. Murtha's Labor and Employment group regularly offers in-house training on harassment prevention and other workforce topics. If you have any questions on this case or other issue, or wish to arrange for training, please contact a member of our group.

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