



ROBINSON & COLE LLP

Labor, Employment & Benefits



Male Employee Harassed by Male Co-Worker Did Not Establish Hostile Work Environment Claim under Title VII

Sean James, an employee of Platte River Steel Company, claimed that he was sexually harassed by a male co-worker. James complained that, among other incidents, the co-worker jumped on James' back, stuck his tongue in James' ears, grabbed James' crotch, and made obscene and vulgar statements with sexual connotations to James. James sued Platte River, alleging that he was subjected to a hostile work environment in violation of Title VII of the Civil Rights Act of 1964.

In [James v. Platte River Steel Company, Inc.](#) (10/25/04), the U.S. Court of Appeals for the Tenth Circuit dismissed James' claims. The court observed that, although same-sex harassment may violate Title VII, it must be tied to discrimination because of the employee's gender. James failed to establish that the co-worker's harassment was motivated by James' gender. Although James claimed that his co-worker harassed him because he failed to conform to gender stereotypes, James admitted that he was never told by any employees that he dressed or acted like a woman. The court also rejected James' argument that the alleged history of same-sex harassment at Platte River established a hostile work environment claim. Even if the atmosphere at Platte River was characterized by "boorish" behavior, James was required to show that he was personally discriminated against because of his gender to establish a Title VII claim.

USERRA Does Not Confer a Right to an Eight-Hour Rest Period between Returning Home from Military Exercises and Returning to Work

Willie Gordon, a member of the U.S. Army Reserve, also worked for Wawa, Inc. On his way home from weekend reserve duties, Gordon stopped by the Wawa store to pick up his paycheck and his work schedule. Gordon's manager allegedly ordered Gordon to work that night's late shift and threatened termination if Gordon refused. Gordon complied with his manager's request and worked the late shift that night. While driving home from work, he lost consciousness and died in a collision. Gordon's mother sued Wawa, alleging that Wawa deprived Gordon of the right to an eight hour rest period between returning home from military exercises and returning to work, in violation of the Uniformed Services Employment and Reemployment Rights Act.

In [Gordon v. Wawa, Inc.](#) (10/28/04), the U.S. Court of Appeals for the Third Circuit ruled that USERRA does not provide a right to eight hours' rest between the time when the employee returns home from military exercises and when the employee must report to the employer. The court ruled that the eight hour period referred to in USERRA is the outer limit of the time by which an employee must report to the employer upon returning home from military service. The eight-hour provision concerns an employee's obligations to his employer, and does not impose a duty on the employer to provide a rest period.

Court Dismisses Race Discrimination Claim by Employee Disciplined for Rude and Unprofessional Behavior

Gary Herron, who is African-American, worked as a supervisor for DaimlerChrysler Corporation in a transmission plant. Herron performed well in meeting production goals; however, over the span of several years, he was disciplined a number of times for disrespectful, rude and unprofessional behavior towards co-workers, superiors, and subordinates. Herron filed internal complaints that he was harassed and discriminated against because of his race. Herron later resigned after being disciplined and placed on a performance improvement plan for another incident with a supervisor. He then sued DaimlerChrysler, claiming race discrimination, retaliation and harassment in violation of Title VII and Section 1981.

In [Herron v. DaimlerChrysler Corporation](#) (11/3/04), the U.S. Court of Appeals for the Seventh Circuit ruled that Herron failed to establish a claim for race discrimination because he could not demonstrate that he met his employer's legitimate expectations. Although Herron had a positive production record, the employer demonstrated that it required supervisors to interact with subordinates, peers, and supervisors, and Herron had a long history of volatile relationships with these groups. The court found that many of the employment decisions about which Herron complained, including the transfers between departments and the delay in payment of overtime, were "mere annoyances" and not adverse actions which could support Herron's claims. The court also rejected Herron's retaliation and harassment claims because Herron failed to show that DaimlerChrysler's actions were based on his race or his complaints of discrimination.

Interrogation and Termination of Employee who Distributed Fliers Criticizing Company Violates NLRA

Loretta Williams was an insurance adjuster for the United Services Automobile Association, a non-union company. USAA had a workplace solicitation policy banning the distribution of non-company printed information at any time in work areas, and permitted such distribution only during non-working hours in non-work areas. Following weeks of discussion among employees about USAA's reorganization plan and lay-offs of long-term employees, one evening, after working hours, Williams distributed fliers criticizing the lay-offs and requesting that employees wear a red ribbon in support of their former colleagues. Several days later, Williams was called to a meeting with management and questioned because she was seen on a surveillance camera entering the building after hours on the evening the fliers were distributed. Williams was evasive in her answers. A few days later, Williams admitted to her supervisor that she distributed the flyers, and she was immediately terminated for lying during the investigation. Williams filed a charge with the National Labor Relations Board, which found that USAA unlawfully interrogated and terminated Williams for participating in concerted activity protected by the National Labor Relations Act.

In [United Services Automobile Association v. NLRB](#) (11/9/04), the U.S. Court of Appeals for the D.C. Circuit upheld the NLRB's decision. The court rejected USAA's argument that Williams' distribution of the flyers violated the workplace solicitation policy, and thus, was not protected concerted activity. Considering the language in the policy combined with management's representations to the employees, the court concluded there was substantial

evidence that the policy was unlawful because it operated as a blanket prohibition on the distribution of non-company materials in the workplace, even during non-work time, such as lunch breaks, and in non-work areas. The court upheld the NLRB's determination that the interrogation was unlawful based in part on management's admissions that it interrogated Williams because it wanted to determine who was responsible for the fliers, which belied its claims that it interrogated Williams for legitimate business reasons such as concerns about building security and overtime pay. The court rejected USAA's contention that it could lawfully discharge Williams for lying during her interrogation because, as determined by the court, Williams was engaged in concerted activity protected under the NLRA and thus she had a right to respond evasively during the questioning due to her fear of retaliation.

Diversity Immigration Visa Lottery Program Registration Began November 5, 2004

It is time again for the Diversity Immigrant visa lottery program known as "DV-2006." DV-2006 provides 50,000 immigrant visas (green cards) each fiscal year to natives of countries from which immigration has been low over the preceding five years. Applicants for the DV-2006 program are chosen through a computer-generated random lottery. However, the U.S. Citizenship and Immigration Services determines the distribution of visas and allocates visas among six geographic regions with a greater number of visas going to regions with lower rates of immigration. Within each region, no one country may receive more than seven percent of the available visas. To be eligible, an applicant must apply, be a native of one of the designated countries, and satisfy certain other requirements with regard to education and training. The Department of State will only accept completed Electronic Diversity Entry Forms submitted electronically. For a list of the designated countries, other eligibility requirements, an Electronic Diversity Entry Form, and the complete address to electronically submit the application, [click here](#). The registration period for this year's lottery began November 5, 2004 and ends on January 7, 2005.

This is an archive of past issues. As a result, it may contain information that is not current.

The logo for Robinson & Cole LLP is displayed on a dark blue, curved banner. The text "ROBINSON & COLE" is in a white, serif font, with "LLP" in a smaller font size to the right. The banner has a slight shadow and a wavy edge on the right side.

ROBINSON & COLE^{LLP}

