

EMPLOYMENT LAW UPDATE

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Federal Law

Manatt v. Bank of America 03 C.D.O.S. 6613 (9th Cir., July 28, 2003)

The Ninth Circuit Holds That A Claim For Hostile Work Environment Under 42 U.S.C. §1981 Failed As The Claim Was Based On A Few Isolated Incidents Occurring Over A Brief Period.

By Jason A. Geller

In a decision interpreting standards for hostile work environment harassment under §1981, the Ninth Circuit Court of Appeals evaluated the sufficiency of factual allegations to support a claim for environmental harassment.

Plaintiff Li Manatt was an American citizen of Chinese descent. She claimed that during a period of about two and a half years during her employment within Bank of America's Trade Finance Department, her co-workers directed racial epithets towards her. She claimed that she overheard jokes in which co-workers used the term "China man" and overheard them mentioning China and communism. She also claimed, however, that only on couple of occasions did her co-workers direct their comments at her. On one occasion two co-workers pulled their eyes back to mock Asians and on another occasion, they teased her for mispronouncing a word. Manatt complained to the human resources division and her supervisor. Thereafter the jokes stopped.

Manatt filed her lawsuit, claiming, among other things, that the alleged racial epithets violated the equal rights provisions of §1981, which guarantees "all persons" the same right as white citizens to "make and enforce contracts." She claimed that the alleged hostile work environment created by the epithets impacted her working conditions and privileges under her employment "contract" with the Bank.

In granting summary judgment for the Bank, the Ninth Circuit held that §1981, like Title VII of the Civil Rights Act, is not a "general civility code". The Court noted that simple teasing, offhand comments and isolated incidents, unless egregious, will not amount to a hostile work environment. The Court noted that Manatt's allegations about the conduct of her co-workers amounted to nothing more than "simple teasing" and "offhand comments".

Moreover, the Court dismissed on summary judgment Manatt's retaliation claim based on the Bank's decision to

transfer her to the private banking section rather than transferring a co-worker. The Court noted that the Bank offered a legitimate non-discriminatory reason for the transfer, and that Manatt failed to introduce any “direct or specific and substantial” circumstantial evidence of retaliation.

This case is instructive to California employers who are evaluating hostile work environment claims for potential summary judgment. Isolated statements or comments, absent any physical or extremely serious conduct, may be grounds for dismissal of the claims.

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