The C & D Newsletter

Citron & Deutsch
A LAW CORPORATION

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March 2006

EMPLOYMENT DISCRIMINATION – WHAT'S IN A NAME?

Under both federal and state law, an employer is prohibited from discriminating against an employee based upon national origin or ancestry. However, a recent case shows that such discrimination does not have to be based upon the employee's physical or genetically determined characteristics such as skin color or physical traits.

In El-Hakem v. BJY, Inc., the claim of discrimination was based upon the chief executive officer's repeated use of a non-Arabic name instead of the employee's Arabic name. In this case, Gregg Young, the chief executive officer of BJY, Inc. repeatedly called Mamdouh El-Hakem, who is of Arabic heritage "Manny." Young's explanation was that he believed that a "western" name would increase El-Hakem's chances for success and would be more acceptable to BJY's clientele.

El-Hakem objected to the use of the name "Manny" but despite El-Hakem's objection, Young continued to call him "Manny" in telephone calls and e-mails. When El-Hakem proposed in an e-mail that Young use "Hakem", his last name, if he found Mamdouh difficult to pronounce, Young suggested in his reply e-mail that El-Hakem be called "Hank." El Hakem objected again. Despite El-Hakem's objections, Young persisted in calling El-Hakem "Manny" once a week in the Monday marketing meeting for approximately two months and in e-mails at least twice a month thereafter. The conduct continued for almost a year.

The court held that even though Young's conduct was not especially severe, since these incidents were frequent and consistent, a reasonable juror could conclude that Young's intentional conduct created a hostile work environment, racially hostile to a reasonable Arab. The court stated that names are often a proxy for race and ethnicity.

This case illustrates that employers must be vigilant in guarding against any type of discrimination, not just discrimination based on skin color and physical characteristics.

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