MOSES & SINGER LLP

Employment *Matters* ALERT

Spring 2006

Recently, the U.S. Equal Employment Opportunity Commission (EEOC) settled three employee harassment cases and won a case involving employment discrimination, which we thought might be of interest to you.

Table of Contents

U.S. E.E.O.C. v. National Education Association (Civil Action No. A01-0225-CV).....1

U.S. E.E.O.C. v. Wal-Mart Stores, Inc. (8.05-CV-01862).....1

U.S. E.E.O.C. v. Wal-Mart Stores, Inc. (8.05-CV-00313).....1

U.S. E.E.O.C. v. Alamo Rent-A-Car LLC (No. CIV 02-01908-PHX-ROS).....2

MOSES & SINGER LLP
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
212-554-7800

E.E.O.C. v. National Education Association (sexual harassment)

The EEOC won a settlement of $750,000 in a sexual harassment lawsuit it filed against the NEA and one of its affiliates on behalf of three female former employees. What stands out about the lawsuit is that the manager's behavior that led to the lawsuit, although abusive and belligerent, was not sexual. The reason the harassment was alleged to be discriminatory was that the abusive behavior was directed only at female employees. The EEOC alleged that the manager:

> *[T]argeted the female staff by screaming and yelling at them with little or no provocation, often using profanity and frequently berating them in public. [He] turned bright red with bulging neck veins as he screamed, coming so close they often felt his saliva spit on their faces. He also physically intimidated the women by sneaking up behind them and watching over their work for no apparent reason. [H]e would shake his fists at the women and come within striking distance, raising fears that he would physically attack the women.*

The lawsuit demonstrates that abuse can be actionable as sexual harassment even if there is no sexual activity. Mistreatment of employees – sexual or not – that is sufficiently severe and pervasive can provoke EEOC action if directed at a protected group. It is easy to see that this principle would apply to abusive conduct directed at or confined to African-Americans, older people, foreigners, the disabled, or any other protected group.

Note To Employers: *It is important for employers to train their employees, especially managers and supervisors, that abusive conduct, even if not sexual in nature, will not be tolerated, and can result in a lawsuit if aimed at a protected class.*

E.E.O.C. v. Wal-Mart (sexual harassment)

In two cases, the EEOC sued the same Wal-Mart store on behalf of female employees for sexual harassment. In these cases, the alleged harassment did consist of sexual conduct, but the store was accused of failing to act despite the fact that the harassment was reported by the employees.

In the first case, the harassment included a male manager exposing himself, touching, grabbing and fondling the women, making sexually suggestive comments, requesting sex, and other lewd conduct, resulting in the resignation of one of the women employees. In the second case, a store assistant manager propositioned an employee after hiring her, used vulgar language, made sexual comments and touched her private parts.

In both cases, management allegedly failed to act on the reports of the harassment. Although both men were ultimately removed from the

environment, their removal was purportedly unrelated to the harassment. The manager in the first case voluntarily resigned, and the assistant store manager in the second matter was transferred for "unrelated reasons."

Wal-Mart settled the cases for $315,000.

Note To Employers: *These cases serve as a reminder to employers that it is not enough to have a written harassment policy. The policy must be enforced, and corrective action taken when justified complaints are made.*

EEOC v. Alamo Rent-A-Car LLC (religious discrimination)

In September 2002, the EEOC sued Alamo in federal court in Arizona on behalf of a Somali customer sales representative who was terminated for covering her head during the month of Ramadan, allegedly in violation of the company's dress policy. According to the EEOC, the employee, who had worked at Alamo since 1999, had been permitted to cover her head during the holiday in 1999 and 2000, but Alamo refused her request to do so after the September 11 attacks in 2001.

The Court took the unusual step of finding Alamo liable for religious discrimination without a trial. The Court rejected Alamo's claim that it reasonably accommodated plaintiff's religion by permitting her to wear the head covering when she was not servicing customers. The Court found that since plaintiff's job was to service clients, the "accommodation" would make it impossible for plaintiff to wear her head covering at work. Further, the Court found there was no undue burden on Alamo since the cost to let plaintiff wear the head covering was little, if any.

Note To Employers: *When evaluating requests for reasonable accommodations –in this case religion, although more commonly disability – employers should grant reasonable requests, especially where there is little or no cost to the employer.*

For more information, contact:
Kimberly Klein
212-554-7853
kklein@mosessinger.com

MOSES & SINGER LLP
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
212-554-7800

Employment and Labor Group

David Rabinowitz
Co-Chair
212.554.7815
drabinowitz@mosessinger.com

Abraham Y. Skoff
Co-Chair
212.554.7897
askoff@mosessinger.com

James Alterbaum
212.554.7886
jalterbaum@mosessinger.com

Cathy J. Frankel
212.554.7848
cfrankel@mosessinger.com

Steven J. Glaser
212.554.7820
sglaser@mosessinger.com

Howard R. Herman
212.554.7847
hherman@mosessinger.com

Kimberly Klein
212.554.7853
kklein@mosessinger.com

Robert D. Lillienstein
212.554.7807
rlillienstein@mosessinger.com

Philippe A. Zimmerman
212.554.7895
pzimmerman@mosessinger.com

Moses & Singer LLP provides cost effective and result-focused legal services in the following primary areas:

- Banking and Finance
- Business Reorganization, Bankruptcy and Creditors' Rights
- Corporate Securities and M & A
- Entertainment, Advertising, IP and Internet Technology
- Healthcare
- Litigation
- Real Estate
- Trusts and Estates and Wealth Preservation
- Tax

Employment Matters is a general comment on recent developments in the law. It does not contain a complete legal analysis or constitute an opinion of Moses & Singer LLP or any member of the Firm on the legal issues described.

All Moses & Singer attorneys are admitted to practice in New York and some are also admitted in New Jersey.