"Hostile Work Environment": Beyond the Buzz Words

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It is more and more common for employers to hear employee allegations of a "hostile work environment," "harassment" or a "toxic workplace." In some instances current or former employees are using those terms as a defense mechanism when their performance is being criticized or they are facing discipline or discharge. Often the terms are used to describe the behavior of supervisors or co-workers. It is important for employers to properly assess such allegations and determine whether there is the potential for employer liability.

A recent decision of the U.S. Court of Appeals for the 7th Circuit (which includes Wisconsin, Illinois and Indiana) serves as a helpful reminder to employers of the necessary elements of such claims, as well as the proactive steps employers can take to better defend themselves when facing such allegations. In *Trahanas v. Northwestern University, et al*., (No. 21-3278, 7th Cir., April 7, 2023), the court reviewed a case where summary judgment was granted by the District Court in the Northern District of Illinois in favor of the employer, Northwestern University, dismissing the claims of a research technician in the University's medical lab. Putting aside the particular facts of the case, important points to extract from the court's legal analysis regarding the employee's hostile work environment claim include the following:

- Such claims must be based on a legally protected class under federal law (or applicable state law if venued at the state level);
- Strict liability for harassment by a supervisor which involves a tangible employment action requires a significant change in employment status (e.g., hiring, firing, promotion) and not merely something the employee finds unpleasant;
- If no tangible employment action was taken, employers can raise a defense to allegations of a supervisor's harassment based on the existence and promulgation of an appropriate anti-harassment policy and the failure of the employee to take advantage of the policy provided by the employer;
- The complaining employee's failure to actually read the anti-harassment policy does not eliminate the employer's defense when there is proof it was received by the employee (e.g., handbook acknowledgement);
- Real or perceived fear of retaliation for making a complaint under the policy does not excuse the employee from using the policy's complaint mechanism;

- Claims of co-worker harassment (as opposed to supervisory harassment) can lead to liability if the employer was negligent in discovering or remedying the harassment;
- The employer may be able to avoid liability if it has a complaint procedure for co-worker harassment and the alleged victim fails to utilize it.

None of the above takeaways are new legal developments or any change in interpretation by the court, but the decision serves to reinforce the framework in which claims of workplace harassment will be legally evaluated. Of course, if the first step of the analysis is not satisfied because the allegations do not involve a protected class, prudent employers will shift evaluation to internal policies or procedures that deal with workplace decorum and employee interactions rather than discrimination laws.

When dealing with allegations of protected class harassment, however, *Trahanas* highlights the value to employers of maintaining sound anti-harassment policies, training of supervisors, employee orientation as to the policy, as well as handbook and policy acknowledgement recordkeeping. Those and similar proactive measures can serve as critical facts to be established when asserting affirmative defenses to avoid liability.