

Federal Court Says Employer Can Be Liable for Acts of Anonymous Harasser

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As a major national company learned recently, employers cannot shirk their obligations to investigate employee complaints of a hostile work environment simply because the identity of the harasser is unknown. Failure to investigate all good faith complaints of harassment can result in serious liability for the employer under the anti-discrimination statutes.

In *Pryor v. United Air Lines, Inc.*, the plaintiff, an African-American flight attendant, complained to United after she found a note in her company mailbox with a drawing of a person hanging from a noose accompanied by the “n-word” and language encouraging the hunting and killing of African-Americans. She immediately complained to her supervisor, but he failed to escalate the matter in the manner required by United’s Harassment and Discrimination Policy. Other United supervisors also failed to follow the policy’s reporting protocol, despite the seriousness of the racist death threat and the circulation of other racist remarks at United’s Dulles Airport facility concerning other African-American flight attendants. When the police sought to investigate, the supervisors were uncooperative. United then closed its investigation without informing the plaintiff. Plaintiff later filed a complaint alleging hostile work environment in violation of Section 1981 and Title VII.

Taking all of these facts into consideration, the district court held that the racist death threats, though not necessarily pervasive, were sufficiently severe to create a hostile work environment, but it ultimately granted summary judgment to United because there was no reason to believe that the harasser would have been found even if United investigated properly. The Fourth Circuit Court of Appeals disagreed saying that “even if a diligent response may not have been successful, a company is not thereby excused for its lack of diligence,” and here a jury could conclude that United’s response to the complaint was neither prompt nor reasonably calculated to end the harassment. It therefore vacated the summary judgment order and remanded the case back to the district court. Short of settlement, a jury will now decide whether United may be held liable for the actions of the anonymous harasser.

The *Pryor* decision makes clear that the anonymous nature of threats or acts of harassment does not lessen or eliminate an employer’s responsibility to investigate complaints and take prompt actions reasonably calculated to end the harassment, and it may in fact heighten it where the harassment especially severe or pervasive

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