

The New Jersey Law Against Discrimination Is Color Blind

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The New Jersey Law Against Discrimination (LAD) prohibits race discrimination in the workplace. Claims of racial discrimination under LAD are not limited to people of color or minority individuals claiming Caucasian supervisors or owners of businesses have discriminated against them. Sometimes, claims of racial discrimination are brought by Caucasian claimants articulating that a supervisor of another race has discriminated against them and thus has created a “hostile working environment” which supports their claim of wrongful treatment.

In this area of [employment law](#), each case is extremely fact sensitive and is evaluated by the courts on a case by case basis. In this context, claimants argue they have been terminated from employment for reasons of race discrimination or sometimes utilize a theory known as constructive discharge. Constructive discharge is a claim that although they resigned their employment and were not fired, the environment created was so hostile or abusive that a reasonable person should not be required to endure this treatment. Thus, the resignation is justified and should be treated as if the individual was fired from their job.

Whether the plaintiff has been terminated involuntarily or resigned, in order to be successful in a hostile working environment case, the legal standard under LAD requires the plaintiff demonstrate that the offending party’s racially discriminatory conduct would not have occurred **but for** the fact that the plaintiff was a different race. In other words, this portion of the legal standard requires a plaintiff prove it was solely their race which caused the discriminatory workplace behavior. Alternatively, if the plaintiff cannot sustain the “but for” standard described above, they may also be successful if they prove that the conduct was so severe or pervasive that a reasonable person of the same race would conclude that the work environment was hostile or abusive for that reason. These standards are

applicable for any prospective plaintiff, regardless of their race.

To answer these questions, the courts evaluate the particular factual allegations to determine whether the complained of conduct would make an average, reasonable person believe the work atmosphere was racially charged and hostile. For example, in a recent case, there was an isolated instance in which an African-American supervisor whose management style was abusive to everyone used the phrase “white b—h” to refer to a subordinate. The Court determined that phrase was insufficient to sustain this standard. In this case, the court took note of the fact and considered it significant that the racial comment was made in private and in response to the question, “what kind of power trip are you on anyway?” On the other hand, there are cases where racial name calling even in a singular incident in the workplace would be determined sufficient to sustain this legal standard.

The fact sensitive nature of the inquiry suggests that the best course of action for a person in the workplace who believes they are being discriminated against is to keep detailed notes on a contemporaneous basis, identifying behaviors as they happen which arguably creates a work environment which no reasonable person should be forced to endure. Additionally, an aggrieved claimant should report the discriminatory behavior to the appropriate human resource professional closely in time to when the behavior occurred to avoid the perception that if the claimant believed the conduct to be so abhorrent, why did it take such a lengthy period of time to be reported to management.