NORTH CAROLINA BAR ASSOCIATION
SEEKING LIBERTY & JUSTICE

LABOR & EMPLOYMENT

Published by the NCBA's Labor & Employment Law Section Section Vol. 29, No. 2 December 2010 www.ncbar.org

Workplace Emotional Distress Claims

by Heather Adams

Introduction

Although conflict in the workplace can lead to significant stress, courts are reluctant to intervene. Consequently, ordinary insults or garden variety rudeness are not actionable. Nonetheless, it is unlawful for a co-worker or employer to deliberately cause serious emotional harm.

Workplace Setting

Are claims for emotional distress treated differently when the conduct at issue occurs in the workplace? The standard elements of the tort of intentional infliction of emotional distress (delineated below) are required whether the setting is the workplace or elsewhere. However, courts are reluctant to find liability when the conduct at issue occurs in the workplace, often noting that an employer must be able to criticize and discipline employees, and should be permitted to do so, within reason, even though many of these acts are unpleasant for the employee. Accordingly, at least one court has noted that "North Carolina courts have been particularly hesitant in finding intentional infliction of emotional distress claims actionable within an employment claim." **Jackson v. Blue Dolphin Communications of N.C., LLC**, 226 F. Supp. 2d 785, 794 (W.D.N.C. 2002).

Nonetheless, these claims show up with some degree of frequency. In discrimination and wrongful discharge cases, an employee might argue that the same conduct that violated discrimination or wrongful discharge laws also caused emotional distress. The addition of an emotional distress claim may increase the amount of recoverable damages, which is often limited under federal and state discrimination and wrongful discharge laws.

IIED Claims

To establish an IIED claim, a plaintiff must make a showing of extreme and outrageous conduct, "which is intended to cause and does cause" severe emotional distress. **Dickens v. Puryear**, 302 N.C. 437, 452, 276 S.E.2d 325, 335 (1981). Extreme and outrageous conduct is conduct "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." **Hogan v. Forsyth Country Club Co.**, 79 N.C. App. 483, 493, 340 S.E.2d 116, 123 (1986) (citation omitted). "The liability clearly does not extend to mere insults, indignities, [and] threats." **Wagoner v. Elkin City Sch. Bd. of Educ**., 113 N.C. App. 579, 586, 440 S.E.2d 119, 123 (1994) (School board did not exhibit extreme and outrageous conduct toward teacher when school official told her to throw away her education materials because she would never need them again, removed her from her teaching position to a different job away from other faculty members in a small room with high humidity and temperatures, and assigned her after-school and Saturday work hours.).

As a general rule, "it is extremely rare to find conduct in the employment context that will rise to the level of outrageousness necessary to support a claim of intentional infliction of emotional distress." **Thomas v. Northern Telecom, Inc**., 157 F. Supp. 2d 627, 635 (M.D.N.C. 2000) (citation omitted) (no claim where employer allegedly gave plaintiff an excessive workload, required that she obtain supervisor permission to attend physical therapy while allowing white employees to attend therapy whenever they wanted, and failing to file paperwork on a timely basis causing plaintiff to miss disability payments).

In the **Hogan** case, three plaintiffs brought claims for intentional infliction of emotional distress. The court found one plaintiff's allegations sufficient where she alleged that her supervisor continuously made sexually suggestive remarks to her, touched her in an offensive manner, screamed profanities at her, threatened her with bodily injury, and advanced toward her with a knife. In contrast, the court deemed insufficient allegations that a supervisor screamed profanities at another plaintiff, called her names, interfered with her work, and threw menus at her. In the other dismissed claim, the defendant purportedly refused to grant the plaintiff pregnancy leave, directed her to carry objects weighing more than ten pounds while she was pregnant, refused to let her leave work to go to the hospital when she was experiencing labor pains, and terminated her employment when she left work anyway. **Hogan**, 79 N.C. App. at 490-494.

In **Daniel v. Carolina Sunrock Corp**., 110 N.C. App. 376, 430 S.E.2d 306 (1993), the evidence was insufficient for extreme and outrageous conduct where other employees took notes on the plaintiff's activities, counted and screened plaintiff's personal phone calls,

inspected the contents of plaintiff's desk while she attended her father's funeral, moved plaintiff to a smaller office with no phone and no heat, and made harassing phone calls to plaintiff, her sister-in-law, and mother.

When the alleged conduct involves sexual harassment, several North Carolina decisions, in addition to **Hogan**, have found extreme and outrageous conduct in the workplace, resulting in liability for intentional infliction of emotional distress. For example, in **Brown v. Burlington Industries, Inc**., 93 N.C. App. 431, 378 S.E.2d 232 (1989), the court found that a jury could reasonably determine that there was extreme and outrageous conduct where the defendant plant manager made sexually suggestive remarks, such as "how tight" the plaintiff was and how he would like to have his legs "wrapped around her," and made sexual gestures, such as grabbing his penis while stating that "you just tear me up" and puckering his lips so as to insinuate that she would have to kiss him in order to get her paycheck. **See also Bryant v. Thalhimer Brothers, Inc**., 113 N.C. App. 1, 437 S.E.2d 519 (1993) (Jury could reasonably determine there was extreme and outrageous conduct where the defendant made sexual comments and gestures, rubbed his penis against the plaintiff's hands, and on another occasion told her to pull her pants down.).

NIED Claims

To establish a claim for negligent infliction of emotional distress, a plaintiff must allege that "(1) the defendant negligently engaged in conduct, (2) it was reasonably foreseeable that such conduct would cause the plaintiff severe emotional distress, and (3) the conduct did in fact cause the plaintiff severe emotional distress." **Gardner v. Gardner**, 334 N.C. 662, 665-66, 435 S.E.2d 324, 327 (1993) (citations omitted). Work-related NIED claims are preempted in North Carolina by North Carolina's Workers' Compensation Act. **Riley v. Debaer**, 149 N.C. App. 520, 526, 562 S.E.2d 69, 72 (2002) *aff'd*, **Riley v. DeBaer**, 356 N.C. 426, 571 S.E.2d 587 (2002).

Summary

Extreme and outrageous conduct has been found to have occurred in the workplace, particularly in connection with sexual harassment. However, for the most part, intentional infliction of emotional distress claims are rarely successful in the employment context.

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