



## **N.J. Human Resources Law Alert**

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### **New Jersey Appellate Court Affirms Summary Judgment for Employer Dismissing Employee's Race Discrimination Claim Because OSTRACISM BY FELLOW EMPLOYEES DOES NOT CONSTITUTE UNLAWFUL RETALIATION**

The Appellate Division of the New Jersey state courts recently affirmed a trial court's summary judgment in favor of a trucking company, dismissing a claim by the company's former employee that he was subjected to workplace retaliation and ostracism after he complained of race-based harassment. *Dunkley v. S. Coraluzzo Petroleum*, 437 N.J. Super. 366 (App. Div. 2014).

The employee, an African-American, was hired by the company as an oil delivery driver. The company gave a copy of its handbook to the employee, and paired him with a Caucasian senior driver for two weeks of on-road training.

During the on-road training period, the trainer made several offensive race-related comments to the employee. When the employee complained to the company's safety director, the safety director re-assigned the employee to a different trainer.

The employee encountered no such discrimination with the new trainer, but nonetheless felt ostracized by co-workers who "wouldn't even say a word" to the employee after the employee complained about the first trainer. Eventually the employee resigned.

The employee sued the company under the New Jersey Law Against Discrimination ("LAD"), claiming he was constructively discharged as a consequence of "hostile work environment" harassment. He also claimed he was the victim of retaliation for his complaint of race discrimination. The trial court granted the company's motion for summary judgment on all counts, and the Appellate Division affirmed.

The appellate court had little difficulty dismissing the employee's claim of discrimination. As the court explained in its decision, the company's handbook specifically prohibited unlawful discrimination, established an effective procedure for reporting and correcting any acts of discrimination, and prohibited its workers from retaliating against an employee who complains of discrimination. "Here, despite knowing the procedures, plaintiff simply failed to follow them." *Id.* at 381. The company therefore could not be held legally responsible for the discriminatory conduct of the first trainer.

More surprisingly, the court also affirmed the dismissal of the employee's retaliation claim, holding that the ostracism of the employee by his fellow employees does not support such a claim:

We also conclude plaintiff's perceived ostracism by co-workers fails to support his claim of hostile work environment. The Supreme Court has explained, the LAD does not create a "sort of civility code for the workplace[.]" Rather, it advances "[f]reedom from discrimination." Employee discourtesy and rudeness should not be confused with employee harassment. Further, an "unhappy" workplace does not equate to a hostile work environment under the LAD.

*Id.* at 382 (citations omitted). The appellate court therefore affirmed the summary judgment on all counts, dismissing the employee's claims in their entirety.

**THE TAKEAWAY:** The appellate court's decision recognizes there are limits on an employer's ability to police social interactions among its employees. As a practical matter, an employer can only require that its workers refrain from retaliating against a complaining employee; the employer cannot effectively require that its workers befriend that employee. Here, by characterizing the ostracism of the employee as mere "discourtesy and rudeness," the court concluded that such conduct was not "so unbearable that a reasonable person would be forced to separate from the employment because of the conduct." *Id.* at 382, 383. The employee was therefore unable to succeed on his constructive discharge claim.

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If you have questions concerning this court decision and how it may apply in your workplace, please contact [Sean Kelly](#), Esq.

### **About the Co-Editors**

For over 30 years, [Sean Kelly](#) has focused his practice on counseling employers and defending employment cases, and has successfully tried many employment cases to verdict. He is certified by the Supreme Court of New Jersey as a Civil Trial Attorney, has been repeatedly included in New Jersey Monthly Magazine's list of New Jersey "Super Lawyers," holds the highest rating awarded by the Martindale-Hubbell Lawyers Directory, has been named a Master of two separate American Inns of Court, and is included on the New Jersey Superior Court roster of court-approved mediators.

[DanaLynn Colao](#) focuses her practice on business litigation with an emphasis on employment issues. She counsels and provides training for clients on a wide array of issues that arise in the workplace including medical leaves of absence, wage and hour claims, employment agreements and non-compete agreements. Strategic thinking and affirmative measures enable DanaLynn to significantly reduce potential liability for her clients. DanaLynn was selected to the *New Jersey Law Journal's* list of leading lawyers in the "Forty Under 40" selection and she has been listed since 2009 in the NJ Super Lawyers "Rising Star" category.

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