

Locke Lord QuickStudy: Massachusetts Courts Send Warnings to Employers

Locke Lord LLP

WRITTEN BY

[Richard D. Glovsky](#)

Massachusetts courts have sent several recent reminders to employers that the courts will scrutinize discrimination and harassment allegations carefully before letting employers off the hook. Employers need to remember to keep their employees, especially their supervisors, up to date on recent developments, conduct appropriate and timely trainings and carefully consider adverse employment actions. Employers should investigate any claims before they escalate to costly, and perhaps unnecessary, litigation.

In *Equal Opportunity Commission v. Aviation Port Services*, for example, Chief Federal District Court Judge F. Dennis Saylor IV, on April 1, 2021, awarded default damages in a case in which the EEOC contended that Aviation Port Services fired six female Passenger Service Agents when they refused to wear pants or knee-length skirts, despite requests for a religious accommodation. Chief Judge Saylor noted that APS' Safety, Training, and Quality Control Coordinator refuted APS' rationale for the terminations, a concern that long skirts would be caught in moving conveyor belts.

In another illuminating case, *Taveras v. Northeast Foods, LLC, d/b/a Burger King*, United States District Court Judge Richard G. Stearns of the District of Massachusetts reasoned on March 4, 2021, that an Hispanic woman with a very positive work history, but subject to a demotion, raised viable claims of race and national origin discrimination. Judge Stearns focused upon what were perceived to be dismissive and demeaning comments as well as statements made by the plaintiff's supervisor criticizing her accent and complaining he could not understand her. Judge Stearns found those comments, if proven at trial, amounted to direct evidence of discrimination.

Lastly, on May 13, 2021, in *15 Lagrange Street Condominium et al v. Massachusetts Commission Against Discrimination*, the Massachusetts Appeals Court reversed a finding of the Massachusetts Commission Against Discrimination, and instead held that the plaintiff had demonstrated a hostile work environment claim based on race. The court reasoned that one of the white owners/managers of the "gentlemen's club" at which the plaintiff was a bouncer, had treated him differently from white bouncers by, *inter alia*, "greeting non-black bouncers by name, shaking their hands, and talking to them;" telling him "he did not want 'colored people' using walkie-talkies, and limiting the number of black dancers who worked evenings and referring to them as "n****rs." The court concluded that the totality of facts such as those constituted a hostile work environment.

While every set of facts is unique, the primary lessons to be learned from these cases include: employers need to

(1) pay close attention to the underlying facts before taking an action adverse to an employee and (2) train their employees to recognize signs of potential issues and take action to investigate such issues or complaints. If employers take such steps, they will go a long way toward avoiding workplace issues, complaints and even litigation.

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