

Chicago Daily Law Bulletin®

Volume 164, No. 77

Serving Chicago's legal community for 163 years

Some work environments, hostile as advertised, are not actionable

When it comes to hostile work environments, not all workplaces are created equal.

In the Northern District's ruling in *Westbrook v. Illinois Department of Human Services* last month, analysis of the plaintiff's claim centered on the fact that the hostility of her work environment was as-advertised and therefore did not give rise to a viable claim under federal law.

Velma Westbrook was hired by the Illinois Department of Human Services in 2001 to serve as a security aide in a treatment center for mentally ill patients. All of the residents of the facilities where Westbrook worked were criminal defendants who had avoided conviction based on a finding of insanity.

Her primary job duties included de-escalating resident behavior, preventing residents from harming themselves or others and documenting inappropriate behavior in the residents' files. She received three months of specialized training prior to starting work, learning how to deal with disruptive residents and even to defend herself if need be.

After nearly 15 years of working in this position in various facilities throughout the state, there was one patient in particular that Westbrook could not tolerate. The patient continuously called her racially derogatory names, threatened

her on several occasions and in at least one instance attempted to attack her. Westbrook claimed that she requested a transfer to another unit to get away from this patient, but the IDHS denied ever receiving a complaint from Westbrook concerning the patient's behavior.

The patient also expressed her dislike for Westbrook in the form of several complaints filed with the Office of Inspector General, including one in October 2014 alleging that Westbrook threatened her. Westbrook was placed on paid administrative leave while this complaint was investigated, and she was reinstated in February 2015 after the OIG determined the patient's claims were unfounded.

Thereafter, Westbrook, an African-American woman, brought claims for disparate treatment on the basis of her sex

... the fact that the source of the behavior was not a supervisor or co-worker and instead a mentally ill resident under her supervision, was fatal to Westbrook's claim.

and race and a claim for hostile work environment under Title VII of the Civil Rights Act of 1964. Only her hostile work environment claim remained pending at the summary judgment stage.

In considering Westbrook's claim, the court considered

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whether the patient's conduct was "sufficiently severe or pervasive" to alter the conditions of employment and create a hostile work environment, a test that has both an objective and subjective component. Despite the patient's frequent harassment of Westbrook,

and dismissed Westbrook's hostile work environment claim, finding that "she was hired into a working environment that might be inherently hostile and she was trained to deal with that." In sum, it was known when Westbrook accepted the position that the majority of the job was to treat people determined to be severely mentally ill. That it turned out to be a hostile work environment was no surprise.

The court went on to find that there was no basis for employer liability against the IDHS because Westbrook failed to take reasonable steps to put the IDHS on notice of the alleged hostile work environment. While one of her supervisors knew about the patient's behavior, Westbrook knew that the supervisor did not have authority to take any action. Westbrook further demonstrated that since she had successfully obtained a transfer for an unrelated reason in the past, she knew how to navigate this process and did not do so here.

In addition, since the patient's conduct was of the type that occurred on a daily basis at the facility, it also was not "so pervasive" that a jury could infer that someone at IDHS with authority to take action would have known about it.

Failing to satisfy two of the elements necessary for a successful hostile work environment claim, Westbrook's case was dismissed.