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Labor & Employment Alert

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Second Circuit clarifies permissible anti-bias training in *Chislett v. New York City Department of Education*

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The court's decision confirms that employers can provide anti-bias workforce trainings consistent with non-discrimination laws, but demonstrates that employers must proceed carefully to avoid claims of racial stereotyping.

What's the impact?

- The Second Circuit revived a public employee's Section 1983 claim asserting that the NYC DOE maintained a racially hostile work environment attributable to a municipal policy or custom.
- The 3-judge panel found evidence sufficient to create issues of material fact for a jury, based on alleged statements during DOE anti-bias trainings, racially charged workplace interactions with coworkers, and supervisors' alleged failure to address complaints.
- The decision underscores the importance of designing workplace anti-bias trainings and initiatives that focus on collective improvement in mitigation of biases and avoid stereotyping.

In *Chislett v. New York City Department of Education*, decided September 25, 2025, the Second Circuit revived a plaintiff's hostile work environment claim under Section 1983, based on issues of material fact as to whether the NYC DOE maintained a racially hostile work environment attributable to a municipal policy or custom.

Chislett v. New York City Department of Education

A white former employee, who resigned from her position following her demotion, brought suit against the New York City Department of Education (DOE) and its Chancellor under 42 U.S.C. § 1983, alleging (1) demotion based on a municipal policy that made race a determinative factor in employment decisions, (2) a racially hostile work environment stemming from mandatory implicit bias trainings and related workplace communications, and (3) constructive discharge. The district court granted summary judgment to the defendants on all claims, concluding that the plaintiff failed to demonstrate the existence of a municipal policy linked to the demotion, hostile work environment, and constructive discharge. The district court did not determine whether the employee had established a genuine dispute of material fact about whether she experienced a hostile work environment; instead, the district court held that any such environment could not be attributed to a DOE policy.

The plaintiff appealed to the Second Circuit.

Key facts

The plaintiff, a former executive director within the DOE's Office of Equity & Access, alleged that the content of mandatory implicit bias trainings and certain workplace interactions created a racially charged environment. She alleged repeated instances where training facilitators and coworkers made negative generalizations about "white culture," physically segregated employees by race, and attributed negative traits to "whiteness." For example, she alleged that workplace trainings included statements that "'white culture's values' are 'homogenous and supremacist'" and listed traits of "white supremacy culture." She further alleged that she experienced workplace conflicts where colleagues accused her of exercising "white privilege."

The plaintiff further alleged that her complaints to supervisors about these incidents were ignored or dismissed, and that she was subjected to ongoing racialized comments and hostility from subordinates and colleagues. After her supervisory responsibilities were removed in March 2019, she ultimately resigned, claiming constructive discharge.

Court's analysis

The three-judge panel of the Second Circuit (Judges Pierre Nelson Leval, Joseph Biano, and William Nardini) affirmed summary judgment for the DOE on the dismissal of plaintiff's claims of

race-based demotion and constructive discharge. However, the court revived the plaintiff's hostile work environment claim under Section 1983. As discussed below, the court cited plaintiff's evidence of alleged racially charged statements during DOE trainings and workplace interactions, combined with supervisors' alleged failure to address the plaintiff's complaints, as sufficient to create genuine disputes of material fact about whether a racially hostile environment existed due to a municipal policy of inaction and acquiescence.

DEMOTION CLAIM

The court applied the McDonnell Douglas burden-shifting framework, requiring the plaintiff to show that race was a "but-for" cause of the adverse employment action. The DOE provided legitimate, non-discriminatory reasons for removing the plaintiff's supervisory duties in March 2019, including negative feedback from team members and concerns about her leadership.

The DOE provided evidence that several subordinates and colleagues reported that the plaintiff created a "negative work environment" and was ineffective as a leader. Additionally, the defendants pointed to evidence of multiple incidents reflecting the plaintiff's own racial insensitivity, including her use of a highly offensive racial slur in a conversation with colleagues when describing her father's treatment of Black people, which defendants cited as contributing to workplace tensions and concerns about her ability to lead a diverse team.

The court focused on the evidence of the plaintiff's ineffectiveness as a leader and instances exemplifying her own lack of professionalism in small settings without directly discussing the evidence of her racial insensitivities. Ultimately, the court found that the plaintiff failed to produce evidence that the decision-makers on her demotion were motivated by racial bias, and affirmed summary judgment on this claim.

HOSTILE WORK ENVIRONMENT CLAIM

The Second Circuit panel emphasized, "[w]e do not suggest that the conduct of implicit bias trainings is per se racist." Rather, "[w]hat matters here is the way the trainings were [allegedly] conducted" and "[w]hen employment trainings discuss any race 'with a constant drumbeat of essentialist, deterministic, and negative language [about a particular race], they risk liability under federal law.'"[1]

Based on disputed issues of fact, the court held that a reasonable jury could find the workplace environment objectively hostile based on the totality of the circumstances, including repeated racially charged statements during trainings, physical segregation by race, and the spillover of such conduct into daily workplace interactions.

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[1] "Essentialism," in the context of race, is the belief that socially constructed racial categories reflect "inherent" biological differences.

The defendants had argued that, under the Second Circuit's 2013 decision in *Maraschiello v. City of Buffalo Police Department*, merely accusing an employee of discrimination or calling them "racist" does not itself constitute actionable discrimination. The court acknowledged this precedent, noting that "'Racism' is not a race, and discrimination on the basis of alleged racism is not the same as discrimination on the basis of race." However, the court distinguished the alleged facts of this case, taking the view that in the context of the alleged repeated remarks attributing negative qualities to "whiteness" and the broader pattern of alleged conduct, there was a question of fact as to whether such accusations were intended as identifying and disparaging a feature of the plaintiff's race. In its analysis, the court did not discuss the defendants' evidence of racially insensitive comments made by the plaintiff. Thus, the court rejected the defendants' argument that the Maraschiello decision required dismissal of the hostile work environment claim on these facts prior to trial.

Ultimately, the court found sufficient evidence to create a genuine issue of disputed fact for trial as to whether the plaintiff was subjected to a race-based hostile work environment that was the product of a municipal policy or custom.

CONSTRUCTIVE DISCHARGE CLAIM

The court affirmed summary judgment for the employer on the constructive discharge claim, finding that while the plaintiff may have found her working conditions to have been unpleasant or even abusive, the evidence did not meet the higher standard required to show that the employer intentionally created conditions so intolerable that a reasonable person would feel compelled to resign.

Implications for employers

First, it is important to distinguish among the various types of workplace training programs designed to improve working conditions and reduce or eliminate the risk of workplace conduct inconsistent with equal employment opportunity laws, such as non-discrimination, non-harassment, DEI, implicit bias, and anti-bias training programs. While non-discrimination training is not explicitly mandated by federal law, it has long been regarded as a critical component for an employer's EEO compliance program and to establish the Faragher-Ellerth affirmative defense. Further, in the context of sexual harassment, states including New York have statutory requirements for employers to conduct sexual harassment prevention trainings. Many employers offer broader types of equity-based trainings, designed to increase awareness of issues relating to diversity, equity, inclusion, and belonging (DEI or DEIB). DEI training typically takes a broader approach to creating an inclusive workplace, while implicit bias and anti-bias trainings generally refer to specific types of DEI trainings that can focus on identifying and addressing unconscious stereotypes and assumptions. The allegations in the *Chislett* case relate in part to anti-bias trainings.

Second, prior to *Chislett*, the EEOC issued non-binding guidance in March 2025, titled "What You Should Know About DEI-Related Discrimination at Work." The EEOC guidance advises employers, "[u]nder Title VII, DEI initiatives, policies, programs, or practices may be unlawful if they involve an employer or other covered entity taking an employment action motivated—in whole or in part—by an employee's or applicant's race, sex, or another protected characteristic." The EEOC guidance does not create legal rights, but should be understood to reflect the EEOC's current enforcement focus.

The *Chislett* decision highlights the risk of municipal liability under § 1983 where evidence suggests a pattern of racial harassment and a failure by senior officials to address complaints. More broadly, both public- and private-sector employers should follow the developing law in the area of DEI programs and consult with counsel as needed to ensure that DEI, implicit bias, or anti-bias trainings and related programs are conducted in a manner that is focused on collective improvement in mitigation of biases and avoids stereotyping or making "essentialist" statements about any racial groups. Further, employers should take steps to ensure that all complaints of workplace harassment based on a protected classification are promptly and thoroughly addressed. The ruling also underscores the importance of documenting legitimate, non-discriminatory reasons for adverse employment actions and maintaining clear channels for employee complaints.

Nixon Peabody is available to counsel employers on the design and implementation of legally compliant workplace programs and risk mitigation.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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