

Snapshot

A Focused Look at Today's Human Resource Issues

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Employment Discrimination: New for 2006

What's in a name?

Plenty, says the federal Ninth Circuit Court of Appeals.

Shakespeare didn't think names were important. In *Romeo and Juliet*, he observed, "That which we call a rose by any other name would smell as sweet." The Ninth Circuit, however, disagrees.

In a recent ruling in the case of *WI-Hakem v. BJY, Inc.*, the Ninth Circuit held that the use of an apparently non-offensive nickname can constitute discrimination. In this case, an employee of Arabic heritage sued his former employer and his boss under federal law. The boss repeatedly referred to him by a non-Arabic name, despite his strenuous objections, in the belief that a "western" name would be more acceptable to the employer's clients.

The defense argued that no racial discrimination occurred because the name was not a racial epithet. The federal Ninth Circuit Court of Appeals rejected the argument, stating that repeated use of the nickname violated the employee's protection from race discrimination based on ancestry or ethnic characteristics.

Names *are* important, the Ninth Circuit held ("A group's ethnic characteristics encompass more than its members' skin color and physical traits.") The court could have cited literary authority that disagreed with Shakespeare (e.g., "The beginning of wisdom is to call things by their right names,"

Chinese proverb, and "A good name is better than precious ointment," *Ecclesiastes 7.1.*)

The court ruled that, although the conduct of the boss may not have been especially severe, its frequency and pervasiveness were enough for a jury to conclude that it altered the conditions of employment and created a work environment that was racially hostile to a reasonable Arab.

This case reminds us that actionable harassment can be **either** severe *or* pervasive, and that simply treating an employee differently than his/her coworkers can precipitate a discrimination case. What may appear to be trivial to some can nonetheless lead to liability against both the individual executive and the company.

To quote the advice of Chris Mills, Managing Partner of the Law firm of Fisher and Phillips LLP, "Examine your anti-discrimination and anti-harassment training to ensure that it covers the imposition of westernized - or perhaps another way to phrase would be Anglicized - names on employees, in addition to forbidding traditional racial and ethnic epithets. Otherwise you could end up with another name: Defendant."



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