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Reid v. Google, Inc.: California Supreme Court Rejects 'Stray Remarks Doctrine'

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The California Supreme Court's recent decision in *Reid v. Google, Inc.* underscores an employer's need to take reasonable steps to eliminate all inappropriate comments from the workplace at every level of the organization. Under *Reid*, even casual comments made by non-decisionmaking employees may be used to bolster claims of discrimination.

At age 52, Brian Reid joined Google as the company's director of operations and director of engineering. According to Reid, during his two years at Google, an executive to whom Reid occasionally reported (then aged 38) made age-related comments to Reid "every few weeks," telling him that his ideas were "obsolete" and "too old to matter," and that Reid was "slow," "fuzzy," "sluggish," and "lack[ed] energy." Other coworkers allegedly called Reid an "old man" and "old fuddy-duddy" and joked that his compact disc placard should be labeled "LP" instead of "CD." In addition, in his performance review - in which he earned a performance rating indicating that he "consistently [met] expectations" - Reid's supervisor commented: "Adapting to Google culture is the primary task for the first year here... Right or wrong, Google is simply different: Younger contributors, inexperienced first line managers, and the super fast pace are just a few examples of the environment."

A little more than a year after joining Google, Reid was relieved of most of his duties and asked to focus on developing and implementing an in-house graduate degree program and recruitment program. Soon thereafter, Google terminated his employment, allegedly stating that he was not a "cultural fit."

Reid filed suit, alleging age discrimination. The trial court granted Google's motion for summary judgment. The court of appeal reversed, finding that Reid's evidence and inferences of discrimination raised a triable issue of fact. The California Supreme Court granted review to decide if California should adopt the "stray remarks doctrine" which "deem[s] irrelevant any remarks made by non-

decisionmaking coworkers or remarks made by decisionmaking supervisors outside of the decisional process." The court decided not to adopt the doctrine - which has become a staple in federal circuit courts - and instead held that California courts may not categorically dismiss "stray remarks" from consideration. Stating that stray remarks may corroborate direct evidence of discrimination, the court held that "a trial court must review and base its summary judgment determination on the totality of the evidence in record, including any relevant discriminatory remarks." Despite the potential evidentiary value of stray remarks, the court noted that they alone are not enough to prove actionable discrimination.

While plaintiffs still cannot survive summary judgment by relying on isolated comments unrelated to the termination decision, *Reid* does tell a cautionary tale: inappropriate comments and slurs may be admissible even if made by non-decisionmaking employees. And, although the remarks may be excluded on grounds that they are prejudicial or misleading, or that they confuse the issues, employers would be wise to train - and re-train - all employees on proper workplace conduct.