

# Employment Law Monitor

INSIGHTS ON RECENT DEVELOPMENTS IN FEDERAL AND STATE LABOR & EMPLOYMENT MATTERS

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## Employers May Not Be Liable For The Boorish Behavior Of Their Employees

*November 7, 2011 by Nicole G. McDonough*

On October 19, 2011, the Appellate Division affirmed a trial court's decision that abrasive, abusive, and condescending conduct toward employees does not, on its own, equate to a hostile work environment claim if the workplace conditions were the same for men and women. In other words, while the law protects against harassment motivated by a protected category such as race, gender, or religion, it does not guarantee a civil or courteous environment.

In Miceli v. Lakeland Automotive Corp., A-302-10T2, the Appellate Division considered the trial court's grant of summary judgment in favor of Lakeland Automotive Corporation ("Lakeland"). Miceli, the only female car salesperson at Lakeland, brought a gender discrimination claim under New Jersey's Law Against Discrimination ("LAD"), N.J.S.A. 10:5-1 to 49, against her former employer, Lakeland. She alleged that on three occasions a male co-worker abused, belittled, and harassed her. The scope of the alleged abusive language included the co-worker yelling at her saying she was "going to get hers" and that her "day is coming." Miceli also complained that her supervisor permitted this conduct and directed his own abrasive behavior toward her by speaking to her (and other employees) in an angry, belittling, and condescending manner, and making statements in front of her and everyone else about his frustrations with the employees' work.

The trial judge initially denied Lakeland's pre-discovery motion for summary judgment, noting that the conduct complained of, "while it is impolite, while it is boorish, while it is probably reflective of a lack of human kindness, does not seem to be predicated upon . . . sexist conduct." Nevertheless, the trial court denied the motion so that plaintiff could pursue discovery. Following discovery, Lakeland renewed its motion for summary judgment, and the Court granted it, finding that Miceli did not allege sufficient additional proofs "that the conflicts and altercations between herself and both the sales manager and the co-worker were motivated by her gender," other than Miceli's "blanket assertions."

On appeal, Miceli argued, among other things, that Lakeland had a duty to eliminate the abusive behavior that constituted a "hostile work environment" in violation of LAD. The Appellate Division affirmed the trial court's decision, recognizing that "there is no LAD violation if the same conduct would have occurred regardless of [Miceli's] sex."

The Appellate Division reasoned that the sales manager did not permit the conduct to continue as he addressed each incident about which Miceli complained and warned the co-worker that he would be terminated if problems continued. Moreover, plaintiff admitted that her supervisor's abrasiveness was not limited to plaintiff, but that "[e]veryone complained about [the sales manager]." Miceli even admitted that the sales manager treated two other male co-workers abusively. She explained that the sales manager was "[j]ust an angry person all together."

The Appellate Division concluded that, although rude and obnoxious, "there is no evidence to suggest that the co-worker's conduct . . . was motivated by gender." "Personality conflicts, albeit severe, do not equate to hostile work environment claims simply because the conflict is between a male and a female employee." citing Herman v. Coastal Corp., 348 N.J. Super. 1, 20-21 (App. Div. 2002).

Even though “boorish” behavior may not be unlawful, employers should implement and enforce appropriate workplace guidelines. Also, if issues arise, employers should consult legal counsel regarding the remediation of and potential exposure for acts of their employees and obtain guidance on the best course of action to pursue to avoid and/or minimize liability for such acts.

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