Supervisors and Managers Can Use Subordinates as "Comparators" in Workplace Discrimination Cases

BY ANTHONY J. DRAGGA • AUGUST 25, 2017

On August 2, 2017, a federal judge ruled that supervisors and managers can use their subordinates as "comparators" for lodging workplace discrimination suits against their employers. A termination case from a former public safety officer at Swarthmore College, predicated on an alleged incident of racial discrimination, has now survived both a motion for summary judgment and a motion for reconsideration from the College in the Eastern District of Pennsylvania.

U.S. District Judge Michael Baylson denied Swarthmore College's motion for reconsideration of the College's motion for summary judgment against Shelton O. Sneed, a former public safety sergeant at the college who alleged racial discrimination. In his decision, Judge Baylson examined a Third Circuit case from 2004, Monaco v. American General Assurance, which the College claimed barred supervisors from using subordinates as "comparators," or employees to which plaintiffs compare their own job situations in making out discrimination claims.

The Court disagreed with the College's interpretation, concluding instead that the holding in Monaco emphasized the importance of engaging in a fact-based inquiry as opposed to a conclusion based on a matter of law. "Contrary to the college's arguments, Monaco does not hold that, as a matter of law, a supervisor can never be similarly situated to his subordinates," Judge Baylson said. "Rather, it emphasizes the importance of engaging in a fact-intensive inquiry regarding the actual job duties and responsibilities of the plaintiff and the alleged comparators."

Client Tip: *This case highlights the court's reluctance to establish bright line tests with respect to the use of "comparators" in the employment discrimination context. Employers must engage in a fact intensive evaluation of an employee's actual job functions vis a vis their comparators when responding to workplace discrimination complaints.*

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