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**HRMA-PRINCETON LEGISLATIVE/LEGAL UPDATE**

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***THE CASE OF THE FUEL COURT ASSOCIATE AND THE DRIVE-OFFS***

**HAJRA V. WAWA, D.N.J. (1/26/18)**

**Here’s What Happened …**

Plaintiff is a Muslim who immigrated to the United States from Kosovo. As a Fuel Court Associate, Plaintiff's responsibilities included, among other things, providing service to customers at Wawa's gas station, pumping gas for customers, processing payments for gas, and *performing other tasks both inside and outside of the store as assigned*. Plaintiff worked overnight on the fuel court, working shifts of varying lengths between 10:00 P.M. and 7:00 A.M. On a typical shift, Plaintiff was the only Fuel Court Associate on duty and was alone on the fuel court.

On 2-3 occasions, while at work, Assistant Manager (Crawford) told Plaintiff to “speak English.” *HWE?* The day after the last of these comments, which Crawford made on or about April 29, 2012, Plaintiff complained to the General Manager (Paul). In response, Paul issued Crawford a written warning. Crawford made no further comments after being reprimanded by Paul. *Ok so far?*

*Around the same time Plaintiff complained of Crawford's comments to Paul*, Paul noticed that there had been several “drive-offs” registered on the fuel court in April 2012. A “drive-off” occurs when a customer gets gas, but drives away without ever paying. The April 2012 “drive-offs” came to Paul's attention when he reviewed the store's Transaction Journal. The Transaction Journal is a report generated by Wawa that captures, among other things, the date and time of every transaction at the store (including “drive-offs”), the register at which the transaction was processed, the type of transaction, the amount of the transaction, and the employee who was logged into the register at the time of the transaction.

Paul contacted Patricia Wallace (“Wallace”), who worked in loss prevention at Wawa, and asked her to investigate. Wallace testified that she was not aware of Plaintiff's complaints about Crawford (or familiar with who Crawford was) at the time she conducted the investigation. *Good fact?*

Upon conducting her review, Wallace concluded that on at least 11 occasions, Plaintiff had performed fraudulent “drive-offs,” that is, he registered a “drive-off” in Wawa's system when the customer had actually paid for gas in cash (so, he’s pocketing the cash). Wallace reached this conclusion based on (1) her opinion that none of the typical signs of a “drive-off”—customers getting out of their vehicles to remove the nozzle from their cars themselves and speeding off—were present; (2) the fact that Plaintiff was working at the time each of the supposed “drive-offs” occurred; and (3) the fact that Plaintiff was on video at the register at which each of these “drive-offs” was entered at the time it was entered.

On May 4, 2012, Wallace interviewed Plaintiff. At the close of the interview, Wallace informed Paul that she had concluded that Plaintiff fraudulently registered several “drive-offs.” Based on this information, Paul immediately terminated Plaintiff's employment. *The termination occurred about a week after Plaintiff’s complaint about Crawford*.

Wallace also filed a report with the Pemberton Police Department accusing Plaintiff of theft and provided a detective with copies of the video surveillance and Transaction Journal. *Good idea?* Plaintiff was arrested and charged with theft, ultimately pleading guilty to a lesser offense.

Plaintiff filed a Complaint alleging (1) national origin and religious discrimination; (2) retaliation; and (3) discrimination and hostile work environment harassment.

**Here’s What the Court Had to Say …**

*Evidence of discrimination*:

(1) “My pay was unfairly low and I was the only employee asked to perform custodial tasks.”

- Plaintiff's job description called for him to perform various tasks as assigned. Paul testified that not only did other associates help clean the store—including the bathrooms—but that Paul himself, the General Manager, did so.

- at the time of his termination, Plaintiff was paid a higher hourly wage than 22 of the 27 Caucasion employees at the Pemberton Wawa.

(2) “Discriminatory comments were made to me by an assistant manager (Crawford)”

- Crawford was not involved in the decision to terminate Plaintiff (and was on vacation at the time);

- Plaintiff admits that after he complained to Paul and Paul spoke to Crawford, no further comments were made. And while Crawford's comments were in poor taste, “not every comment, action or joke creates a hostile work environment. That is, '[t]he mere utterance of an epithet, joke, or inappropriate taunt that may cause offense does not sufficiently affect the conditions of employment to implicate ... liability.”

**Food for Thought …**

*Q: Same result if email dated April 4, 2012 from Paul to his manager regarding suspicious drive-offs on the overnight shift and need to investigate?*

*Q: Same result if assistant manager called the Plaintiff a terrorist on 20 occasions and was consulted as to Plaintiff’s performance in connection with the termination decision?*