

## Verbal Harassment: Nurse Can Sue For National-Origin Bias.

The nurse was born in the Dominican Republic. After moving to Puerto Rico she obtained US citizenship five years before starting work at the hospital.

Soon after starting she began to experience harassment from her coworkers due to her Dominican accent. She was generally treated disrespectfully by being made the object of jokes and by being referred to by a derogatory nickname for a domestic servant who is a stupid, uncultured, illiterate character.

She complained verbally to her supervisor, who did absolutely nothing for months until the nurse turned in a lengthy and detailed written complaint, with a letter of resignation which the supervisor convinced the nurse to revoke. Almost a year later, after the situation had not improved, the nurse resigned for good.

She sued her former employer for national origin discrimination in the form of a hostile work environment which caused mental anguish and emotional distress and eventually forced her resignation.

The US District Court for the District of Puerto Rico upheld her right to sue.

### National Origin Discrimination

A Dominican-born being harassed on the job by Puerto Ricans comes within the US Civil Rights Act's definition of national origin discrimination.

### Hostile Work Environment

While infrequent offhand offensive discriminatory remarks are not grounds for a lawsuit, the Court found in this case a pattern of severe and pervasive mistreatment which significantly affected the conditions of the nurse's employment.

The nurse needed psychotherapy and had to miss a number of days from work.

### Employer Liability

The nurse's supervisor did nothing in response to the nurse's frequent verbal complaints and investigated only after she received a detailed complaint in writing.

Not until months after the supervisor got a complaint in writing was the nurse transferred to a different floor, which did not solve the problem because the perpetrators themselves were never dealt with directly and still had contact with her. **De Los Santos Rojas v. Hosp. Espanol**, \_\_\_ F. Supp. 3d \_\_\_, 2015 WL 522991 (D. Puerto Rico, February 10, 2015).

***The evidence demonstrates that several of the nurse's coworkers on her floor engaged in a practice of name-calling, ridicule, mockery and insult directed at the nurse's Dominican accent.***

***When a hostile work environment is created by a coworker, rather than a supervisor, the employer is liable only if the harassment is related to some negligence on the employer's part.***

***Typically such negligence involves evidence that a supervisor or manager knew or should have known about the harassment, yet failed to take prompt and effective action to stop it.***

***The nurse's supervisor met with one of her coworkers. The coworker confirmed she had personally heard others calling the nurse by a derogatory name, mocking her Dominican accent, laughing at her when she spoke and otherwise verbally abusing her.***

***The nurse actually resigned her job once, due to conditions on the job, but the same supervisor convinced her to stay on.***

***The nurse was eventually transferred to another floor, but still met her old coworkers in the locker room.***

UNITED STATES DISTRICT COURT  
PUERTO RICO  
February 10, 2015

## Verbal Mocking: Minority Employee Can Sue.

The operating room scheduler was the only African-American in her department. All the others were Caucasian.

One particular Caucasian coworker began to mock her pronunciation of certain words, specifically "birfday" instead of "birthday" and "aks" instead of "ask."

When a physician asked her what she ate, chicken or watermelon, and she told him she was offended, he said, "Come on, people tell Pollack jokes all the time."

### Complaints to Supervisor

### No Action Taken, Employee Ostracized

She complained to her supervisor, who simply advised her to speak directly with the person who was mocking her. The next day her coworkers stopped talking to her and refused to cooperate with her to the extent she was unable to do her job. When she went to the department director, the director just said she could not identify with her because she herself was not black.

***An employer is not automatically liable when employees harass a coworker on the basis of race.***

***The test for liability is whether a supervisor knew about it and then failed to take prompt and effective remedial action.***

UNITED STATES DISTRICT COURT  
PENNSYLVANIA  
February 10, 2015

The US District Court for the Middle District of Pennsylvania upheld her right to sue for racial harassment.

Infrequent offhand racial remarks are not grounds for a lawsuit. However, in this case there was a persistent and pervasive pattern of mocking based on a racial characteristic that adversely affected her employment in a significant way.

When her superiors became aware of the problem they did nothing by way of prompt and effective remedial action to stop the harassment by her coworkers. **Bryant v. Wilkes-Barre Hosp.**, 2015 WL 539999 (M.D. Penna., February 10, 2015).