RIGHTS STUFF

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Discriminatory Surveillance Is Not A Violation Of Federal Law

We at the BHRC sometimes get calls from members of minority groups who say they were watched closely at a department store without a legitimate reason, or given slow service at a restaurant without a legitimate reason. In May, a federal Court of Appeals held that discriminatory surveillance is not a violation of federal law, and in November, the U.S. Supreme Court decided not to hear the case.

The plaintiffs in the case, all African Americans, alleged that they had been treated badly by Dillard's because of their race. Several of the plaintiffs said they were followed and surveilled while in the store. The Court of Appeals said that "racially biased watchfulness, however reprehensible, does not 'block' a shopper's attempt to contract" and therefore does not violate federal law.

One plaintiff said that he sampled cologne testers while waiting for sales assistance. He believed he made eye contact with the clerk, but she never waited on him. After he waited for 15 minutes, during which time the clerk waited on several white customers, she finally approached him. But instead of offering him service, she swept away the samples.

Another plaintiff said that she tried on some pants and when she came out of the fitting room, the clerk had a "little smirk on the face" and two security officers were watching her. She took the pants to the counter but decided not to buy them. She said she told the first sales associate that her actions had made the store lose a sale, and the associate said, "So?"

Some former Dillard's employees gave affidavits to help establish that the store acted with discriminatory intent. One former clerk said that other Dillard's employees often stereotyped African American customers as likely shoplifters and that she often saw security officers following African American customers for no apparent reason. She said that the officers focused their attention so much on African American customers that several times, she watched white customers openly shoplift without being noticed. Another former clerk said that she saw store employees ask African American customers for receipts when they returned merchandise, but they didn't ask white customers for receipts. Yet another former employee said that the security code directing staff to be on the lookout was announced over the employee intercom much more often when African Americans entered the store than when whites entered. A former security officer said that when the store caught a white person shoplifting, they would just let the person surrender the merchandise and leave. But when they caught an African American customer shoplifting, they would call the police.

The Court said, "We recognize that the plaintiffs were offended by the alleged conduct of Dillard's

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Workplace Restraining Orders

Recently, an Indiana Court of Appeals interpreted for the first time the Indiana Workplace Violence Restraining Orders Act, passed in 2002.

Carol Baker works for the Indiana Family and Social Services Administration. In that capacity, she is a non-voting member of the Indiana Council on Independent Living and is required to attend ICOIL meetings. ICOIL is a federally-mandated state council that oversees independent living services for people with disabilities and facilitates interactions between people with disabilities, independent living centers and state agencies.

Teresa Torres has attended ICOIL meeting since the 1990s. She's the director of Everybody Counts, an independent living center. She has moderate hearing loss and can't delineate sounds or hear people speaking under certain circumstances unless she's using an assistive listening device.

Over the years, Baker and other council members have seen Torres yell and curse at meetings. They've observed her overturn chairs and throw objects. Several times, Baker has called Capitol Police because she feared for her safety and the safety of other council members based on Torres' behavior.

At the April 9, 2009, ICOIL meeting, Torres had an assistive listening device, but she still was not able to hear well. She repeatedly complained that the device was not working. She eventually removed it and threw it at the table, saying "This piece of sh_t doesn't work and I'm tired of telling you." She stood up, continued to yell and began pacing the room with clenched fists.

At some point during the meeting, Torres picked up the end of a table and dropped it on the floor. Then she threw or kicked a chair into the table. One council member left at this point because she was frightened of Torres. Torres screamed, "Damn every one of you to hell. F_ _ k every one of you mother fu_ _ _ ing sons of b_ _ _ _es, I hope you all die. Do you hear me? I hope you all die."

ICOIL adjourned the meeting at that point. After the adjournment, Torres jumped from her seat, started to yell again and approached the table. She threw the listening device and charged toward Baker. She leaned toward Baker and screamed, "And, you. You sit there just staring at me and not blinking. At least I don't have your disability. I'm not ugly. I just can't hear well." She then jerked a microphone from the table and grabbed a computer out of the hands of the ICOIL's president, a legally blind man. She demanded to know who had purchased the equipment. Baker called the police at this point.

A few weeks later, FSSA filed a petition requesting a workplace violence restraining order against Torres for the benefit of Baker. The petition said that Torres had made a credible threat of violence against Baker, had behaved in a threatening way and had approached Baker in a threatening manner. Baker wrote that she was "concerned that Torres may commit a battery on me in the future if she is not restrained from coming near me while I am at work, going to and from work and at home." The trial court granted the restraining order and Torres appealed.

Torres argued that there was "no evidence establishing that her actions would cause a reasonable person to suffer emotional distress 'and that actually caused the victim to suffer emotional distress.'" The Court of Appeals disagreed, noting Torres' history of outbursts and disruptive behavior. The Court said that it was reasonable to conclude that people in attendance would have suffered, and in fact did suffer, emotional distress due to her outbursts.

Baker testified that because of Torres, she was having trouble eating, experiencing stomach problems before ICOIL meetings and feeling drained after the meetings. The Court found this to be evidence of "actual emotional distress."

Torres said she represented no credible threat of violence because she was merely "protesting" or "advocating." The Court said no one challenged her right to attend meetings and speak her mind. "However, yelling, threatening, using profanity, throwing metal devices, knocking over chairs, or charging people, constitute behavior far beyond mere protestations or any type of advocacy contemplated in the workplace."

The Court of Appeals upheld the restraining order. The case is Torres v. Indiana Family and Social Services Administration, 905 NE 2d 24 (Ind. App. 2009). ♦

Employers Often Violate Fair Labor Laws, Study Says

According to a recent study, low-wage workers are routinely denied proper overtime pay, are often paid less than the minimum wage and are often denied workers' compensation benefits.

The study, which involved surveying more than 4000 employees in New York, Chicago and Los Angeles, found that 68% of the workers interviewed reported experiencing at least one pay-related violation in the previous week. The typical worker lost $51 the previous week through wage violations, out of an average weekly earning of $339. That translates into a 15% loss in pay.

The researchers said the study shows that employee abuse is a "widespread phenomenon across the low-wage labor market in the United States." According to the study, 26 percent of the workers had been paid less than the minimum wage the week before being surveyed. One in seven had worked off the clock (uncompensated) the week before. And 76 percent of those who had worked overtime the week before were not paid their proper overtime pay.

The new U.S. Secretary of Labor, Hilda L. Solis, said in response to the study that "there is no excuse for the disregard of federal labor standards - especially those designed to protect the neediest among us. Today's report clearly shows we still have a major task before us."

Many small businesses say that they are forced to violate wage laws to remain competitive.

The study found that women were more likely to suffer minimum wage violations than men, and that African American employees were three times more likely to suffer minimum wage violations than white employees.

One of the authors of the study, Annette Bernhardt, policy co-director of the National Employment Law Project, said, "These practices are not just morally reprehensible, but they're bad for the economy. When unscrupulous employers break the law, they're robbing families of money to put food on the table, they're robbing communities of spending power and they're robbing governments of vital tax revenues."

People with questions about their rights and responsibilities under fair labors standards should contact the Indiana Department of Labor at 800-743-3333 or a private attorney.

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employees, but we do not believe the facts asserted here are sufficient to establish interference" as required by federal law. The Court cited a previous case that held no actionable interference with purchasing an item had occurred when the customer left after he was offended by a sales clerk who refused to serve him, gave him the finger and said "I hate f_ _ _ _ing Mexicans." Because the customer left the store before the store out and out refused to serve him, the law had not been violated, according to the Court.

The Court said that the case could continue under the Missouri Human Rights Law, which, like the Bloomington Human Rights Ordinance, prohibits race discrimination in public accommodations.

The case is Gregory v. Dillards, Inc., 565 F. 3d 464 (8th Cir. 2009). ♦

HAPPY HOLIDAYS!!

Black History Month Events Announced

February is Black History Month, and the City of Bloomington Black History Month Committee has announced several events that will be held in February.

Black History Month, Bloomington Style; Conversations Kick-Off Event: February 4, 2010 at 6 p.m., in the Showers City Hall Council Chambers. Kick Off Black History Month with a conversation about African American images: self-image, media images, how image impacts success. The conversation will be followed by a reception and entertainment.

Joel Washington 50 on 50 Art Exhibit Opening: February 11, 2010 at 5:30 p.m. in the Showers City Hall Atrium.

"Becoming A Woman" - A Conversation Between Ebony Princesses and the Women Who Care About Them: February 15, 2010 at 5:30 p.m. at Angela's Ebony Hair Design, 1328 N. Woodburn Avenue, Bloomington.

Black History Contest Awards Reception: February 25, 2010 at 6 p.m. at Showers City Hall Council Chambers.

Black History Month Gala: February 27, 2010 at 7 p.m. at the Hilton Garden Inn, $40 per person. Tickets available beginning January 4, 2010 through the Sunrise Box Office, www.buskirkchumley.com or 323-3020. For information about scholarship opportunities, call 349-3560 or contact safeandcivil@bloomington.in.gov. If you would like to list your organization's Black History Month events on the City of Bloomington's Black History Month Calendar of Events, contact safeandcivil@bloomington.in.gov.

Black History Month essays are due by January 29, 2010.

The members of the City's 2010 Black History Month Committee include Doris Sims, Alrick Banks, Betty Bridgwaters, Dedric Dennist, Diane Hanks, Valeri Haughton, William Hosea, William Knox, Eric Love, Sharlene Newman, Jolaina Parker, Beverly Smith, Patrick Smith, Debra Vance and Beverly Calender-Anderson. ♦

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