



## Discrimination Lawsuit Torpedoed By Poor Fundamentals

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A mixed-race transgender former employee alleged that his supervisor made derogatory statements about his race and gender and that he was constructively discharged. This sounds like a case with several hot button issues that could make national news over the coming months, right? Well...no.

The plaintiff filed a federal lawsuit in the U.S. Court for the Middle District of Pennsylvania [claiming race, national origin, and gender discrimination](#) in violation of Title VII, Section 1981, and the Pennsylvania Human Relations Act ("PHRA").

On November 27, the judge granted the employer's motion to dismiss the plaintiff's Title VII and PHRA claims. As for the Title VII claims, although the plaintiff obtained a dismissal and right to sue letter from the Equal Employment Opportunity Commission ("EEOC"), he never perfected his charge. Because he failed to sign and verify his charge under oath, he did not exhaust his administrative remedies and his Title VII claims were dismissed with prejudice. Moreover, the plaintiff's PHRA claims were still pending at the time he filed his complaint, so those claims also were dismissed for failure to exhaust.

Aside from these procedural flaws, the court held that the plaintiff failed to state a claim in support of several of his allegations. Namely, the plaintiff could not support a constructive discharge claim because he failed to state in

his complaint how his employment ended, so he did not specifically plead that he was forced to resign under unbearable conditions. He also did not state a claim of retaliation because he failed to allege that he was subjected to an adverse employment action or that his supervisor allegedly “ratcheted up” his alleged harassment following the plaintiff’s complaint. In the end, only the plaintiff’s Section 1981 hostile work environment claim survived dismissal.

The case is a good reminder that no matter how matter how newsworthy a plaintiff’s allegations may sound, the plaintiff still needs to stick to the fundamentals, satisfy all administrative prerequisites, and file a well-pleaded complaint. Employers and their counsel will always have solid defenses if a plaintiff fails to do so.