

Watch Your Language In The Workplace: Timeless Challenge For Employers

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[CurrentsletterL](#)Some employment law issues, employers can address or at least manage with the appropriate proactive steps. Just scan through recent BT Currents posts for some examples – [lawfully managing an employee's request for accommodation](#), whether it be for religious or [health reasons](#), or documenting the reasons [for a RIF](#). Potentially hard issues to be sure, but ones over which employers and their lawyers have some degree of control. Much harder to manage, however, are the problems that occasionally arise from (excuse the technical legal term) people doing dumb things. The most obvious example is inappropriate behavior of a sexual nature. Employers can have the right policy in place, conduct annual training, and respond promptly and appropriately to any complaints, but it seems we will never stop having to deal with this issue to some degree. People making bad decisions when they have an electronic device at their fingertips is a newer example, but seemingly will be timeless as well. You cannot completely manage bad judgement. I am reminded by two court decisions that came out a day apart this week, coincidentally both brought by nurses, both focusing on comments allegedly made evidencing a discriminatory intent, of another timeless issue: ill-advised remarks in the workplace. So this week, L is for watching your language. Both decisions involve cases where the employer was denied summary judgment on a discrimination claim, meaning that the cases will proceed to trial. In [Natale v. East Coast Salon Services, Inc.](#), filed in the U.S. District Court for the District of New Jersey, the nurse alleged that her termination for insubordination was discriminatory on the basis of age. In support of her claims, she alleged these comments (among others):

- She was sent home for wearing “old lady shoes.”
- When she showed her supervisor her new shoes, she was told not to wear them and that she would “look like a retarded old nurse.”
- Her supervisor said she would “look younger” if her she did her fingernails differently.

In [Anderson v. Advocate Health Care and Hospitals Corp.](#), filed in the Northern District of Illinois, the plaintiff was filed for violating the workplace violence policy when a coworker alleged that the plaintiff had hit her. Ms. Anderson said that she was fired because of her race and for previously filing an internal complaint. In support of her case, she alleged that her supervisor referred to black employees as “you people.” In both cases, the respective

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courts in declining to shut down the case at the summary judgment stage, relied in part on these alleged comments. First a caveat – we do not know that these comments were made. Provided the cases do not settle, those questions will be determined by the juries. If the statements WERE made, we can all agree they were a bad idea. What can an employer do? There is no new advice on this question:

- Invest in hiring, and as part of that process measure applicants' values and sensitivities.
- Train, train, train – both on awareness of behaviors that can lead to liability, as well as to build a culture of respect.
- Promptly address allegations or observations of any such comments.

The thing is, both of these employers may have done these things. It happens. If nothing else, these cases – regardless of the ultimate outcome – providing training opportunities to remind supervisors and all employees of the importance of watching their language.