

Harassment Statute of Limitations May Stretch Back in Time

By Darren A. Feider

Williams Kastner Labor & Employment Advisor, Summer 2011

In order to get around the three-year statute of limitations for employer harassment claims, plaintiffs often attempt to connect relatively innocuous employer conduct occurring within the time limit with more egregious conduct occurring before it. Timeliness was recently discussed in *Loeffelholz v. University of Washington*, 162 Wn. App. 360 (2011).

In *Loeffelholz*, the plaintiff was a program coordinator for facility services. Well before the Washington legislature recognized sexual orientation claims in June of 2006, the plaintiff's supervisor asked her if she was gay, which she affirmed, and he advised her not to flaunt her behavior around him. She claimed that shortly thereafter she lost the privilege of flex-time and ability to attend training seminars. The supervisor told her that he had a gun in his car and he was trying to get information on people to use against them. He spoke about revenge and expressed his hatred for certain people and he refused to complete her evaluation. Co-workers told her that he made derogatory comments about her sexual orientation and weight. He was then deployed to Iraq in 2006 and warned his subordinates that he would return an angry man.

After returning from Iraq, he had no supervisory authority over the employee. After his return, the plaintiff filed a complaint asserting sexual orientation discrimination.

The UW moved to dismiss the claim on the basis that it was time-barred. The trial court agreed, and dismissed the employee's claims. The employee appealed, asserting that at least one discriminatory act occurred within the three-year limitation period (the "very angry man" comment) allowing her to use evidence of earlier discriminatory acts. Although the *Loeffelholz* court recognized that the "angry man" statement was not *per se* hostile towards sexual orientation, it also held it could not be reviewed in isolation and needed to be understood as part

of a series of separate acts that constituted one unlawful employment practice. In other words, the *Loeffelholz* court allowed the employee to link prior time-barred conduct to establish a hostile work environment claim because of one discrete statement he made when he being assigned Iraq.

The *Loeffelholz* court also reminded the case to establish the exact date of the “angry man” comment to determine whether it fell within the three-year statute of limitations.

The takeaways from *Loeffelholz* are that courts may allow employees to link stale and old events to establish a hostile work environment claim as long as one of the alleged acts occurred within the statute of limitations. The other takeaway from the *Loeffelholz* decision is that protected class status continues to expand, including sexual orientation. Many employers still do not recognize that teasing, jokes or other conduct that can be construed as anti-gay is an actual claim. Employers should amend their policies and procedures to reflect this additional basis of liability. They should also train their supervisors, and their supervisors’ supervisors, to be cognizant of this new basis.