
Recent Third Circuit Decision Regarding Joint Employers Extends Liability for Violation of Title VII to the Clients of Staffing Companies

By Amanda J. MacDonald / Nov 25, 2015

On November 18, 2015, the United States Court of Appeals for the Third Circuit issued a decision regarding joint employers that extends liability for violations of Title VII to the clients of staffing companies. In the case of *Matthew Faush v. Tuesday Morning, Inc.*, the Third Circuit found that the client of a staffing company could be considered a temporary worker's employer and therefore liable for alleged violation of Title VII.

The plaintiff, Matthew Faush, is an African American who was employed by Labor Ready, a staffing company that provides temporary employees to various clients. Tuesday Morning, Inc. is one such client of Labor Ready. Pursuant to an Agreement to Supply Temporary Employees (the "Agreement") between Labor Ready and Tuesday Morning, Inc., Labor Ready assigned Faush to work at one of Tuesday Morning, Inc.'s stores for a period of ten days.

While working at Tuesday Morning, Inc., Faush claims to have been the victim of racial slurs and racially motivated accusations and eventually terminated. Faush filed a lawsuit against Tuesday Morning, Inc. alleging racial discrimination in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), the Pennsylvania Human Relations Act, and 42 U.S.C. § 1981. The District Court found that Faush was not Tuesday Morning, Inc.'s employee and therefore Tuesday Morning, Inc. could not be liable for racial discrimination under Title VII.

The Third Circuit reversed the District Court's decision, finding that sufficient evidence existed for a rational juror to conclude that Faush was Tuesday Morning, Inc.'s employee. In so finding, the Third Circuit applied the test articulated by the United States Supreme Court in *Nationwide Mut. Ins. Co v. Darden*, 503 U.S. 318 (1992). According to *Darden*, the determination of whether an employer-employee relationship exists is based on common law agency doctrine. Factors such as which entity paid the individual's salary, had authority to hire and fire the individual, and exercised control over the individual's daily employment activities are relevant to the inquiry. Notably, two entities may be joint employers of one employee for purposes of Title VII.

While the Third Circuit considered all relevant factors and even noted that no one factor is determinative, the court's decision appears rooted in the degree of control that Tuesday Morning, Inc. exercised over Faush. Tuesday Morning, Inc. assigned work to Faush, directly supervised him, provided training and equipment needed to perform the assigned tasks, and verified the number of hours that Faush worked. According to the court, "Tuesday Morning's extensive control over Faush's activities could suffice to make him a common-law servant even though Labor Ready paid him and had the ultimate power to fire him."

The Third Circuit's focus on the degree of control that Tuesday Morning, Inc. exercised over Faush mirrors the Equal Employment Opportunity Commission's ("EEOC") position on the relationship between temporary workers and the clients of staffing companies. According to guidance issued by the EEOC, "[a] client of a temporary employment agency typically qualifies as an employer of the temporary worker during the job assignment [for purposes of Title VII] . . . because the client usually exercises significant supervisory control over the worker."

In further support of its decision, the court noted that, while not dispositive, the fact that the Agreement between Labor Ready and Tuesday Morning, Inc. characterized Faush and other temporary workers as "Temporary Employees," rather than independent contractors, weighed in favor of finding that Faush was an employee of Tuesday Morning, Inc. The court also found significant the fact that in the Agreement Tuesday Morning, Inc. agreed to comply with all applicable federal, state, and local employment laws. According to the court, "Tuesday Morning agreed that it bore many of the legal responsibilities of a traditional employer, including compliance with Title VII."

The Third Circuit's recent decision serves as a cautionary tale to staffing companies and their clients. To minimize liability for violation of employment laws, staffing companies and their clients are well-advised to seek legal counsel to assist with drafting agreements governing their relationship and to advise regarding the provision of temporary workers.

If you have any questions regarding how the Third Circuit's recent decision affects your business, please contact Stephanie Rawitt at srawitt@clarkhill.com | (215) 640-8515; Amanda MacDonald at amacdonald@clarkhill.com | (412) 394-2507; or another member of Clark Hill's Labor and Employment Practice Group.