

Emojis in the Workplace: Harmless Fun or Something Else?

August 22, 2022

The first emoji was created by Shigetaka Kurita in 1999. It consisted of a pixelated heart that contained a total 144 dots. Technology has advanced significantly in the last two decades, and the variety exists now to support entire conversations consisting of one or two of these whimsical characters. However, emojis can often carry double meanings. With the increasing adoption of remote work policies and use of electronic messaging platforms, should employers be concerned that their employees may inadvertently open the door to a lawsuit?

Title VIII of the Civil Rights Act and other federal and state employment laws prohibit illegal harassment in the form of a hostile work environment. The U.S. Supreme Court has stated that illegal harassment is actionable if it is “sufficiently severe or pervasive to alter the conditions of [the victim’s] employment and create an abusive working environment.” The issue surrounds whether the use of emojis in the workplace, which are sometimes substituted as words during text message exchanges between employees, can rise to this level.

Courts thus far have been hesitant to find that emojis themselves, without some other attendant behavior, can form the basis of a hostile work environment claim. For example, in *Bellue v. East Baton Rouge Sheriff*, the U.S. District Court for the Middle District of Louisiana found that the use of a “winking smiley” with some comments regarding the plaintiff’s looks did not rise to the level of sexual harassment. The Middle District of Florida in *Harrison v. City of Tampa*, where the sending of a “face kissing” emoji, a “face with hearts for eyes” emoji, and a “smiling dog with hearts emoji,” decided that this was not sufficiently severe or pervasive enough to constitute harassment. Likewise, in *Allen v. Ambu-Stat*, the U.S. Court of Appeals for the Eleventh Circuit found that an employee’s harassment claim, which consisted of the receipt of a tongue emoji from a co-worker, suggestive comments made by the co-worker, and having the co-worker point at her groin, did not rise to the level of a hostile work environment.

This is not to say that emojis can never form the basis for a hostile work environment. In *Herman v. Ohio University*, the district court denied a defendant’s motion for judgment on the pleadings after the plaintiff alleged that her supervisor sent her late night text messages telling her that she was beautiful (even though she had requested that her supervisor stop contacting her during nonwork hours), sent her a “winking” emoji and “sweet dreams” and asked her to go to dinner. While the “winking” emoji was not the primary reason the defendant’s motion was denied, the court did consider it in reaching its decision.

The courts’ decisions in the preceding cases largely turn on how pervasive the conduct is. Single isolated text message exchanges that contained innuendo-filled emojis generally do not rise to the level necessary to establish a hostile work environment. However, some state and local jurisdictions do allow a single act to meet

that standard. When offensive emojis are coupled with additional actions over a sustained period of time, however, it is highly possible those actions may meet that burden.

Most employers likely already have a social media policy included in their handbooks, policies, or procedures that are broad enough to include the improper use of electronic messaging, including emojis. However, employees may not be aware that emojis can lead to misunderstandings with significant legal ramifications. It is therefore important that employers stay vigilant to understand alternative meanings of emojis, include limitations on inappropriate emoji use in the workplace, and discuss these issues so that employees are clear as to what is and is not acceptable.

Reprinted with permission from the August 19, 2022 issue of [The Legal Intelligencer](#). © 2022 ALM Media Properties, LLC. Further duplication without permission is prohibited. All rights reserved.

Related people

Chase Stoecker