

Evidence in Continuing Violation Cases

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Because memories fade and it is not considered fair to bring up stale claims, statutes of limitation generally prevent people from litigating events from too far back in the past. However, when a long term employee sues for harassment and retaliation, the employee frequently wants to use evidence dating back several years. Last month, in *Lelaind v. City and County of San Francisco*, the United States District Court for the Northern District of California explained how older evidence may be considered in a continuing violation case.

Anita Lelaind, a 59 year old African American, began working for the City and County of San Francisco Public Utilities Commission in 1985. She became a Senior Stationary Engineer in 1993. She filed her lawsuit in September 2006, alleging nine causes of action for unlawful employment practices based upon her race, color, national origin, gender, and age. Ms. Lelaind's claims were based on various events dating back to 2001.

In July 2001, while Ms. Lelaind served as Acting Chief during the Chief's absence, she appointed Carmi Johnson, an African-American female Stationary Engineer, to act as Senior Stationary Engineer. When Ms. Johnson gave instructions to Bob Ward, a white male crew member, he lunged at her and shouted in a loud voice, "I will do the f-job!" Ms. Johnson told Ms. Lelaind about the incident, and both women reprimanded Mr. Ward.

A month later, a hangman's noose was found in the work area that Ms. Johnson and Ms. Lelaind shared. The noose made Ms. Lelaind have flashbacks of the lynchings that occurred during her childhood in Mississippi.

In September 2001, another noose was found in Ms. Johnson and Ms. Lelaind's work area. In July 2002, a third noose was found on the back of Ms. Johnson's cart. Ms. Lelaind heard that other nooses were found at other locations, and she learned in 2003 or 2004 that there was racist graffiti at another location.

In January 2005, Chris Logia became Ms. Lelaind's supervisor. Ms. Lelaind alleged that he unilaterally removed people from her crew, excluded her from work meetings, and undermined her authority. In June 2005, he gave her a generally positive evaluation, but the evaluation inappropriately criticized her for being on an approved leave of absence. In July 2005, Mr. Logia reassigned and transferred Ms. Lelaind. She was not given a key to her new makeshift office. She received no work to do for five weeks, despite asking for work. She was locked out of her computer.

The defendants brought a motion for summary judgment in which they argued that the 2001 and 2002 events were too old to be considered as evidence. The court considered this motion, noting that the statutes of limitations for the discrimination claims allowed evidence back to only 2005 unless the evidence showed a pattern of continuing violations. The court concluded that the 2001 evidence about the noose and racial slurs was not connected to the 2005 evidence about her supervisor's criticism. These were two separate chains of events so they could not be considered part of a continuing pattern, and Ms. Lelaind would not be allowed to introduce evidence of the noose incidents. With only her supervisor's criticism left in evidence, the court concluded that she did not have a viable cause of action for a hostile work environment.

The employer in this case was fortunate that the court decided that the 2001 events should not continue to haunt the employer. If the facts had been a little different and the court saw more of an overlap between the 2001 and 2005 events, the court might have ruled differently and allowed Ms. Lelaind to use the 2001 events as evidence. This case reinforces the importance of ongoing training for all supervisors to avoid having any discriminatory actions in the workplace.