

# Nothing More Than Workplace Banter?



**A MICRO-INTERACTIONAL EXPLANATION OF  
WORKPLACE BANTER**

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# Workplace Dynamics



- Organizational Culture
- Norms of Interaction
- Dynamics of Power

# Workplace Incivility



- Bullying
- Subtle forms of harassment
- Impact on workers' well-being and job success

# Diversity Management in the U.S. Context



- Zero tolerance approach to racial and ethnic conflict
- “English-only” speaking policy
- Colorism

# Contradiction



- Contradiction between rules and norms of interaction

# Mechanism of Exclusion



- Workplace Banter
- Difficult to observe and measure
- Barrier to minority groups' genuine workplace integration

# National Origin Discrimination



- Legal Definition:

‘the denial of equal employment opportunity because of “an individual’s, or his or her ancestor’s, place of origin; or because an individual has the physical, cultural, or linguistic characteristics of a national origin group.’ (U.S. Equal Employment Opportunity Commission)

# National Origin Discrimination



- Burden of proof: must show that workplace banter, among other evidence was severe or pervasive
- Can be based on direct or indirect evidence



# Research Question, Method and Data



- Research Question: Is banter more likely to be perceived as harmless or as evidence of bias in legal discrimination suits?
- Examined federal and state cases of employment discrimination based on national origin
- Located 975 cases and narrowed my sample to 76 for cases that dealt with claims about language

# Findings



- Majority of cases were decided in favor of the defendant
- Three main patterns in the courts' reasoning:
  - The normalization of derogatory workplace banter
  - The demotion of secondary harassment
  - The statistics of diversity

# Normalization of Derogatory Workplace Banter



- Courts consider the overall workplace context when determining if banter was severe or pervasive
- Justice Scalia stated, “The real social impact of workplace behavior often depends on a constellation of surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of the words used or the physical acts performed.” *Oncale v. Sundowner Offshore Services*, 96-568 (1995-1998).

# Normalization of Derogatory Workplace Banter



- “Totality of the circumstances test”
- “No magic number”
- “Title VII does not guarantee a happy workplace”
- Participation in banter negates discrimination claim
- “Typical” comments
- Matching between derogatory language and country of origin
- “Just a joking kind of thing”

# Normalization of Derogatory Workplace Banter



- “WE HAVE RECOGNIZED THAT TITLE VII DOES NOT ESTABLISH A GENERAL CIVILITY CODE FOR THE WORKPLACE. ACCORDINGLY, THE RUN-OF-THE-MILL BOORISH, JUVENILE, OR ANNOYING BEHAVIOR THAT IS NOT UNCOMMON IN AMERICAN WORKPLACES IS NOT THE STUFF OF A TITLE VII HOSTILE WORK ENVIRONMENT CLAIM.” *Hernandez v. Valley View Hospital Association*, 11-1244 (2013).

# Demotion of Secondary Harassment



- Language used in the employee's vicinity
- The meaning of the language must be understood at the time its spoken by the employee
- General joking context - not aimed specifically at any one employee

# Statistics of Diversity



“Diversity in an employer's staff undercuts an inference of discriminatory intent.”

*Arrocha v. The City University of New York, Edison O. Jackson, CV-02-1868 (2004). Arrocha v. The City University of New York, Edison O. Jackson, 11-CV-03975 (2012).*

# Conclusion



- More needs to be done to inform workers about what counts as discrimination in the workplace and the steps they need to take to address it
- Future Research