

COURT RULES FOR EMPLOYER IN EMOTIONAL DISTRESS CASE

In *Hansson v. Scalise Builders of South Carolina* (Aug. 13, 2007), the South Carolina Supreme Court clarified how to apply the standard for summary judgment to claims alleging intentional infliction of emotional distress, which in South Carolina is also known as the tort of outrage.

The Tort of Intentional Infliction of Emotional Distress in South Carolina

Former employees who file lawsuits for allegedly wrongful discharge or discrimination frequently add a claim for emotional distress to their main claims. This is designed to increase their potential to recover money damages.

Employers in turn often move for summary judgment on such claims because plaintiffs usually do not allege sufficiently extreme conduct. (Employers may also move for dismissal or summary judgment on the basis that workers' compensation law is the exclusive remedy for workplace injuries, including those resulting from outrageous conduct.)

To recover for intentional infliction of emotional distress, a plaintiff must establish the four elements of the claim:

- (1) The defendant intentionally or recklessly inflicted severe emotional distress, or was certain—or substantially certain—that such distress would result from his or her conduct;
- (2) The conduct was so “extreme and outrageous” so as to exceed “all possible bounds of decency” and must be regarded as “atrocious, and utterly intolerable in a civilized community;”
- (3) The actions of the defendant caused the plaintiff’s emotional distress; and
- (4) The emotional distress suffered by the plaintiff was so “severe” that “no reasonable [person] could be expected to endure it.”

So to succeed on such a claim, a former employee would have to show that the employer’s conduct was “extreme and outrageous” *and* that the conduct caused distress of an “extreme or severe nature.”

The courts set such a high standard of proof to prevent this tort from becoming “a panacea for wounded feelings rather than reprehensible conduct.”

The *Hansson* Case

The *Hansson* case illustrates how plaintiffs attempt to assert claims for intentional infliction of emotional distress in employment cases and how employers may obtain summary judgment on such claims.

Tom Hansson was employed by Scalise Builders as a construction worker from 1997 until 2000, when he quit. He claimed his coworkers and supervisor “constantly derided him with callous and vulgar remarks and gestures related to homosexuality.”

In 2002 Hansson sued his former employer and supervisor “alleging various causes of action, including intentional infliction of emotional distress.” The trial court granted summary judgment for the defendants on all claims.

On appeal, Hansson’s sole argument was that the trial court erred in granting summary judgment as to the claim for intentional infliction of emotional distress.

In an unpublished opinion signed by two judges (a third judge dissented), the South Carolina Court of Appeals agreed with Hansson and reversed the trial court’s ruling. It found that Hansson should be able to get to the jury on his outrage claim because reasonable minds could differ as to whether the defendants’ conduct was “extreme and outrageous.”

The Supreme Court decided to review the case and reversed the Court of Appeals. It ruled that the Court of Appeals erred by analyzing only the second element of the tort of outrage and “not proceeding with a similar inquiry into whether Hansson’s resulting emotional distress was sufficiently ‘severe.’”

The Supreme Court pointed out that Hansson’s deposition or affidavit testimony did not establish severe distress. His claim “rested on his testimony that he lost sleep at night and that he visited a dentist.” But “he never received treatment or medication from any other physician or counselor.” Also, “Hansson stated that his coworkers’ conduct did not cause him to lose any time at work.”

In other words, there was no evidence that Hansson could barely function as a result of any extreme and outrageous conduct.

Since Hansson “failed to provide any legally sufficient evidence ... to show that his resulting emotional distress was ‘severe,’” the Supreme Court reinstated the trial court’s ruling for the employer.

The Tort of Intentional Infliction of Emotional Distress in North Carolina

North Carolina also recognizes the tort of intentional infliction of emotional distress. Similar to the elements of such a claim in South Carolina, a “plaintiff must prove (1) extreme and outrageous conduct, (2) which is intended to cause and does cause (3) severe emotional distress to another.”

The extreme and outrageous conduct necessary to support a claim for intentional infliction of emotional distress is defined as conduct which “exceeds all bounds usually tolerated by decent society.” Whether the conduct alleged meets this standard is usually a question of law for the court.

In North Carolina—unlike South Carolina—the exclusivity of remedies provision of the workers’ compensation statute generally does not bar a former employee’s claim against the former employer for intentional infliction of emotional distress.

Like their South Carolina counterparts, employers in North Carolina often move to dismiss or for summary judgment on such claims because of the pleading and proof standards that must be met.

The Bottom Line For Employers in Both Carolinas

Although employees face an uphill battle in establishing a claim for emotional distress, in some cases this claim has been allowed to go to the jury. Employers can protect themselves from such claims that may survive summary judgment by treating employees with respect and not acting in anger when dealing with difficult employees.

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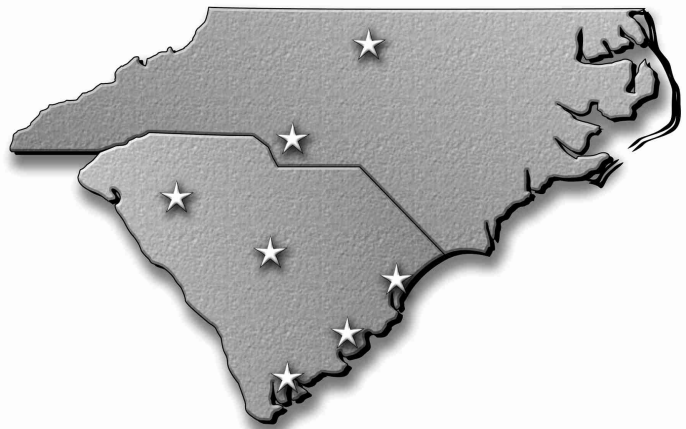
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