

Watch out for Section 1981, the ancient law that can put your own assets at risk

A federal court has made it clear: If a workplace is found to be a racially hostile environment, individual decision-makers are at risk of being held personally liable.

In hostile environment cases involving racial harassment, workers aren't limited to suing under Title VII of the Civil Rights Act of 1964 (which caps liability based on the number of employees) or under state anti-discrimination laws. A much older law—Section 1981 of the Civil Rights Act of 1866—sometimes allows for bigger verdicts and personal liability for supervisors, managers, owners and even HR professionals.

Recent case: Nelly, a Hispanic woman from Ecuador, was a housekeeper at a home owned by former New York Mayor Michael Bloomberg, but run by a property management company.

Nelly's onsite supervisor and another house manager had the most direct contact with her as she performed her work. During the four months she worked there, Nelly alleged she endured constant offensive racial and national-origin based harassment. For example, she claimed her supervisor frequently called her "illegal immigrant." He allegedly said, "Spanish people all come here and have babies so they can stay in this country."

He was said to have stated that Hispanic people "take our jobs money from our pockets" and when they get sick, they routinely "left medical bills unpaid."

Nelly recounted a sign the house manager posted outside when Hispanic workers arrived to paint. It said, "Do not drink water from the house." When white contractors worked at the property, the sign was allegedly removed, and workers were provided drinks and food. Nelly complained about the incidents, but her supervisor dismissed her concerns.

After she fell down some stairs at work, Nelly went out on leave and never returned. After she failed to respond to a request for updated medical information from her doctors, she was terminated.

Nelly waited more than 300 days to file an EEOC complaint. Therefore she missed out on several potential Title VII claims.

But her lawyers looked to a different and early federal law, Section 1981 of the Civil Rights Act of 1866. They invoked it to sue not just the property management company, but also to personally sue Nelly's supervisors.

Her attorneys argued that they were not using Section 1981 to pursue national origin discrimination and hostility. Instead, they were alleging a hostile environment that targeted Nelly's race: Hispanic.

The court agreed with Nelly's lawyers that Hispanic is a race and that supervisors can be personally liable for creating a racially hostile environment. The case now goes to trial. (*Amaya v. Ballyshear et al.*, ED NY, 2018)