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Rare Caste Discrimination Claim Will Face Court Review

Client Alert

8.31.2022

India's traditional caste system divides Hindus into rigid hierarchical groups, including the so-called "untouchables" or Dalit. Historically there was little or no mixing between castes, with upper castes receiving various privileges unavailable to the lower castes. While India's constitution bans discrimination based on caste, caste discrimination is not explicitly banned in the United States.

Some states, however, expressly ban discrimination based on ancestry, which could include caste discrimination, as an individual's caste is passed down from one generation to the next. For example, a California state court is currently reviewing an employee's claim of caste discrimination under a statute prohibiting ancestry discrimination in *Department of Fair Employment and Housing v. Superior Court*, H048962, California Court of Appeals, Sixth District (San Jose).

Title VII of the Civil Rights Act and most other state civil rights acts, including Michigan's Elliott-Larsen Civil Rights Act (ELCRA), do not explicitly identify caste affiliation or ancestry as a protected classification. Michigan employers, and employers in states that do not explicitly recognize ancestry as a protected status, must nonetheless consider whether any of the explicitly protected classes, such as religion, race, color and national origin, might be read to also encompass castes, particularly following recent cases that have read discrimination law broadly to include characteristics such as sexual orientation and gender identity, although not specifically included.

The U.S. Supreme Court has recognized that "at least, membership in a group that is ethnically and physiognomically distinctive" can be included under the umbrella of "race discrimination." It concluded that discrimination based on "Arabian ancestry" is racial discrimination. Under this reasoning caste might qualify as ancestry and, thus, constitute prohibited

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race discrimination.

Employers understand that national origin and race discrimination are prohibited. These recent caste discrimination cases serve as a reminder that discrimination based on ethnicity may also be prohibited even if not an explicitly identified protected status. Accordingly, employers should be vigilant when it comes to managing their workforce and ensure there is a legitimate, nondiscriminatory business basis for all employment actions. Doing so will help protect against such novel claims.

If you have any questions about how this decision may affect your business or any other related employment issue, please contact your Butzel Labor & Employment Attorney.

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