

Farting and Discrimination in the Federal Workplace

By Mathew Tully

By now, what the Washington Post

has called “The Ballad of the Farting Federal Employee” has become something of legend. It’s the tale of a Social Security Administration employee who was reprimanded for his “continuous releasing of bodily gas and the terrible smell that comes with the gas,” as the reprimanding official put it.

In reprimanding this employee, who suffered from an unspecified medical condition, the agency cited 60 instances of flatulence between Sep. 7 and Nov. 29 of last year. It claimed this “[d]isrespectful and unprofessional behavior is unacceptable and detracts from the agency’s ability to maintain a safe, pleasant and productive work environment.” Despite making a stink about this employee’s conduct, the agency later rescinded the reprimand after senior officials learned about it. Citing privacy concerns, the agency did not elaborate on the reasons for the rescission.

Although there is an aspect to this story that is about as amusing as someone sitting on a whoopee cushion, there is a serious part to it too. It is unlikely that this Social Security Administration worker was not the first federal employee to pass gas in the office. He was also likely not the first to cause trouble in the office by passing gas.

The human body is a strange organism with some unpalatable functions that can make co-workers uncomfortable. It is not unheard of for federal employees to complain about co-workers’ or supervisors’ belching or passing gas and claim that these bodily functions contribute to a hostile work environment in violation of Title VII of the Civil Rights Act. The employee in *Cheryl Horner v. U.S. Postal Service*

(2007), for example, claimed the alleged sexual harassment to which she was subjected was evidenced, in part, by the “farting games” her supervisor and a male co-worker engaged in over the intercom. Ultimately, the Equal Employment Opportunity Commission did not find that this particular employee was subjected to sexual harassment, but the case is illustrative of the fact that bodily functions or even “bathroom humor” can become a serious issue in the federal workplace.

Agencies must be careful in how they handle employees who pass gas in the office. If an agency punishes a federal employee of a certain race, color, national origin, sex, or age for passing gas and not others of a different race, color, national origin, sex, or age, it could commit unlawful discrimination in violation of Title VII or the Age Discrimination in Employment Act.

The case *Roger Stanford v. Dep’t of the Army*

(2004) involved a white male employee who filed an Equal Employment Opportunity complaint alleging race and sex discrimination against his agency. The agency had

reprimanded him for violating “office decorum” by saying “fart” in a private conversation within earshot of an African American female co-worker, who had previously complained about his passing gas. This co-worker made a “Fard log” [sic] listing each time she heard the employee pass gas and distributed it around the office for the amusement of others. The employee became known as “Fart Man” and “Stinky.” As the employee noted in his complaint, just one day after receiving his reprimand a black employee passed gas in the presence of several co-workers and was not written up or reprimanded. Further, women in the office uttered the term “brain fart” without being reprimanded.

Initially, the EEOC’s Office of Federal Operations (“OFO”), which is the appeals division, found the employee’s harassment claim was “severe or pervasive enough to state a claim of harassment.” It reversed the agency’s initial decision dismissing the complaint for failure to state a claim and remanded the case to the agency for investigation. Subsequently, an EEOC administrative judge found the employee failed to prove he was subjected to discriminatory harassment. In particular, the judge found the employee failed to show that the co-worker’s actions were motivated by sex or race or that the agency was negligent in response to his complaints. In *Roger Stanford v. Dep’t of the Army*

(2007), the EEOC’s OFO affirmed the judge’s findings on appeal.

Disability discrimination is another important factor that agencies must be cognizant of when addressing a federal employee’s farting or other bodily functions. If passing gas is the result of a disability, the agency could violate the Rehabilitation Act by reprimanding him or her for such conduct. The employee in *John Angle v. Dep’t of Agriculture*

(2004) claimed the agency discriminated against him on the basis of disability, namely “excessive flatulence.” The employee claimed he suffered from a celiac disease, but it was not diagnosed by a physician. A doctor had stated that the employee’s flatulence was “medically trivial and is physically normal.”

An EEOC administrative judge found the employee was not subjected to unlawful discrimination, noting that he failed to show he suffered from a qualifying disability. The EEOC affirmed the administrative judge’s decision, adding that “there is no evidence to conclude that any of the agency alleged actions against complainant were done due to his alleged disability of excessive flatulence.”

While this particular employee failed to meet the burden of proof, showing he had a disability recognized under the Rehabilitation Act, it is easily conceivable that another employee may be able to meet the burden. Subsequent to this case, amendments to the statute have lowered the standard for showing the existence of a qualifying disability. If an employee is able to produce documentation of a diagnosed medical condition that causes excessive flatulence that is not “medically trivial,” but is the symptom of a more serious disorder, such as Irritable Bowel Syndrome, an agency will be open to a more serious claim of disability discrimination. In other words, it could be considered disability discrimination to reprimand or harass an employee with asthma for coughing. It would be similarly questionable to reprimand an employee with a medical condition that causes flatulence for farting.

Federal employees who believe they have been subjected to discrimination on the basis of race, sex, or disability should immediately contact a federal employment law attorney.