

## Nothing Could Be Finer Than To Incorporate In Carolina . . .

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If anyone needs another lesson in the benefits of incorporating a company, consider a decision from earlier this week out of the Western District of North Carolina: *Magaha v. W&B Trucking Co., et al.*

The underlying story is a fairly typical age discrimination claim: longtime worker for company sues after she is permanently laid off at age 67. During her employment, her hours allegedly were cut for no reason and she repeatedly was the subject of age-based jokes and harassment for which she complained, to no avail. What is interesting about this case is that instead of suing her employer – the company – she also sued both owners individually under the Age Discrimination in Employment Act (ADEA) and for wrongful discharge.

Unsurprisingly, the first move by the defendants was to dismiss the owners from the case. In response, the plaintiff argued that the owners should remain in the case because she had been subject to persistent harassment and discriminatory treatment. The theory underpinning this argument appears to be that ordinary harassment or discrimination is one thing, but if it's *really bad*, the owners can be subject to individual liability – and presumably corporate formalities can be chucked out the window.

The district court, however, had none of this. The ADEA makes it unlawful “for an *employer* . . . to discharge any individual or otherwise discriminate against any individual” on the basis of age. 29 U.S.C. § 623 (a)(1) (emphasis added). Note the focus on “employer” and not owner, president, vice president, officer or employee. The wrongful discharge claim – even though based on North Carolina state law – similarly is limited to employers and not individual owners or managers. As a result, the fact the employee felt the harassment and discrimination was particularly egregious made no difference. In the end, the employer is the party who bears responsibility, not the individual owners. While this is good news for the individual owners, consider for a moment what would have happened if there had been no incorporated entity. In that world, the employee would have worked directly for the owners and they – by extension – would have been her “employer” and subject to liability.

The lesson: incorporate. It's simple, cheap to do and can help get individual owners and officers out of the line of fire in an employment case.

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