



## The POWER 30: Frances Baillon

By: Minnesota Lawyer ◉ April 26, 2021

**T**he pandemic has made most of us feel that we're living in a new world, but for Frances Baillon, that's because it has created new ways in which employers can run afoul of the law and new whistleblower lawsuits by allegedly ill-treated employees.

Some employees had to be physically at work as essential employees, but there haven't been safety measures in place. That was a bigger issue earlier on in the pandemic, but Baillon, of Baillon Thome in Minneapolis, thinks such claims will become routine, especially if people don't get vaccinated.

Baillon wrote an amicus curiae brief for the National Employment Lawyers Association-Minnesota chapter in the important *Kenneh v. Homeward Bound*, which found severe or pervasive treatment in a sexual harassment case. She believes the case is significant because it guards against removing cases from juries on a summary judgment or motion to dismiss. It also made clear that federal law is not binding on the state court.

So, she views civil rights law as improving but still challenging. "We've got room to improve in terms of awareness. There's still work to be done."

Notably, "we have a way to go in race cases. Differential treatment is there but not obvious," she said.

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The U.S. Supreme Court has been asked to consider whether one "extremely serious" incident could qualify to create a hostile work environment, Baillon noted. In *Collier v. Dallas County Hospital District*, the N-word was etched into the side of an elevator that Robert

Collier, a Black man who worked as an operating room aide, used to access the hospital cafeteria. Collier reported the graffiti, but the word remained for six months.

The 5th Circuit ruled that the conduct did not establish a hostile work environment because it was not physically threatening and did not unreasonably interfere with the work environment. The court acknowledged that other courts of appeals have found that the use of the slur verbally was enough to create a hostile work environment.

Employees don't always understand that offensive conduct is not actionable, Baillon said. "It's just devastating [to them]," she said. Would-be clients are unhappy and surprised and don't understand that some conduct is not illegal. It's hard to talk people through the difference between "knowing it and showing it," Baillon said.

The process of litigation is picking up as people get used to virtual proceedings, Baillon said. But there is something lost when people don't meet in person. Trials will pick up, she predicted. "It takes the right parties, the right lawyers and the right judge."

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