

Bonita Stone Discusses Special Event Liability, Age Discrimination With *WGN Radio*

June 6, 2023

Litigation partner Bonita Stone was a guest on the Karen Conti Show on *WGN Radio*, where they discussed the topics of potential liabilities with large special events and how to analyze and address age discrimination issues. Regarding the upcoming NASCAR street race in Chicago, Bonita noted, "I think safety right now is the key question. Chicago is not the movie set of Fast and Furious and nobody has any stunt doubles here. So we have to treat people like they're real people, they're alive and we need to make sure that they're kept safe." Providing a spectator experience that is engaging but provides significant barricades and appropriately high fencing is important to making the event a safe experience while mitigating risks of injury.

Bonita added that Chicago has a great deal of experience with large events, for which the city and NASCAR will have levels of insurance. However, she indicated that if there are legal challenges due to injury or property damage, they will more likely be related to safety and security measures, as opposed to driver negligence. There also an assumption of risk for the spectators as "people who go to spectator sports of this magnitude, there is a level of assumption of risk. You know it's a dangerous sport," which can be a viable defense.

Switching topics to allegations of age discrimination, Bonita stated, "First [a plaintiff] has to prove they are within the protected age group, which is 40. . . . You've also got a show that you suffered an adverse employment decision — that can be either got fired, you got demoted, you didn't get a raise or, in some cases, you weren't hired." Bonita noted that, "You have to show that you were meeting the company's reasonable expectations — your performance is fine, and that somebody younger than you either replaced you or got hired [instead of] you." She added that age cases are harder now for a plaintiff, because you have to show more than just age had some bearing on the adverse decision. Rather, it is the "but for" test—that is, but for your age the adverse employment event would not have occurred-. Effectively age has to be the determining factor; it is "a hard standard, and . . . the Supreme Court has made it very daunting."

Going through some real-world examples, Bonita noted the Supreme Court was highly skeptical that social banter like "Okay, Boomer" is reflective of age discrimination. In contrast, she noted that a "big red flag" exists when discussing retirement. "If somebody comments on your retirement, either you should retire, or asks you if you are thinking of retiring," that would be the type of . . . evidence "you would be looking for." Bonita also discussed the implications of job descriptions that can have a disproportionate impact on older employees. Employers are allowed to set the requirements needed for a job and "if the job duties required [you] to be computer savvy, you're going to have to be computer savvy." Being proactive and demonstrating a willingness to get training could offer workers some protection.

"What is legal liability for the NASCAR race in Chicago?," *WGN Radio*, May 28, 2023

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