

In *Ozgur v. Daimler Trucks N. Am. LLC*, 2020 WL 2522024 (D. Or. May 18, 2020), Judge Michael W. Mosman held after an in camera review that the attorney-client privilege applied to emails exchanged between nonattorney employees containing information to be provided to a lawyer for the purpose of obtaining legal advice.

In this age discrimination litigation, plaintiff had sought and been rejected for a position defendant posted. Defendant had posted the position to comply with Labor Department requirements requiring a showing that there were no qualified U.S. citizens willing and able to perform that position before a company could hire a foreign national sponsored by the company for an H1B1 visa. Defendant had retained counsel to assist it in complying with the Labor Department requirements and immigration laws related to the H1B1 process. Plaintiff sought discovery of emails sent between defendant's recruiting and hiring manager as well as a few other employees. Defendant claimed that these emails were privileged because they were sent for the purpose of obtaining legal advice, even though no counsel appeared on some of the communications. *Id.* at *1.

Judge Mosman stated that counsel need not be copied for the attorney-client privilege to shield emails from discovery: "In the corporate realm, the privilege can also protect communications between non-attorney corporate employees when the communications are made for the purposes of obtaining legal advice from an attorney." The privilege extends to both the counseling and planning role of an attorney "as well as when lawyers represent their clients in litigation." *Id.* at *2.

After conducting an in camera review, Judge Mosman found that the emails at issue were sent for the purpose of gathering information to present to defendant's counsel and were, therefore, privileged. Judge Mosman observed that "the attorney-client privilege squarely covers communications between corporate employees who are discussing the types of things they need to discuss in order [to] present a question or information to a lawyer for the purpose of obtaining legal advice."

Judge Mosman also held that emails sent prior to counsel's involvement were privileged. Although these emails were sent before counsel became involved, "the information sought ... in the initial emails [was] the exact information that was required to obtain the legal advice from [counsel]. In other words, the context suggests that [the recruiting manager] initiated the conversation with [the hiring manager] for at least the partial purpose of seeking legal advice from [counsel]."

Accordingly, these various communications were protected from discovery by the attorney-client privilege.