

The Ever Evolving Definition of Sexual Harassment

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The U.S. Court of Appeals for the Eleventh Circuit recently issued an en banc decision finding the U.S. District Court of for the Northern District of Alabama erred in granting summary judgment in a sexual harassment case where the harassment was not directed specifically at the plaintiff. See *Ingrid Reeves v. C.H. Robinson Worldwide*, No. 2:06-CV-358-IPJ. While this case did not involve a federal agency, the precedent the Eleventh Circuit set, i.e., that an employer is liable for a hostile work environment even if the harassing remarks are not directed at the plaintiff, is applicable to federal employees and significantly expands employees' rights to challenge hostile environments.

The plaintiff in *C.H. Robinson Worldwide* claimed that her employer allowed a hostile work environment because her male co-workers referred to other individuals (both clients and other employees) using gender-derogatory language; turned the office radio to crude stations; and displayed crude pornographic images on their computers. The plaintiff attempted to deter the hostile work environment by changing the radio to a "classic rock station" and by notifying her co-workers that their language was offensive. However, when the harassment persisted, she complained to her branch manager and later to two Executives. Having received no relief, the plaintiff resigned from her position and filed a hostile work environment complaint.

The U.S. District Court granted the employers motion for summary judgment and found the employer not liable explaining that "the offensive conduct was not motivated by Reeves's sex, because the derogatory language in the office was not directed at her in particular." The court further reasoned that "because the language was used and the radio program was played in the presence of all employees," "both men and women were afforded like treatment," and the plaintiff was not "intentionally singled out for adverse treatment because of her sex."

On appeal, the Eleventh Circuit reversed this decision, holding that "a member of a protected group cannot be forced to endure pervasive, derogatory conduct and references that are gender-specific in the workplace, just because the workplace may be otherwise rife with generally indiscriminate vulgar conduct. Title VII does not offer boorish employers a free pass to discriminate against their employees specifically on account of gender just because they have tolerated pervasive but indiscriminate profanity as well." This decision should prevent employers from escaping liability due to the fact that sexually discriminating or harassing language was used in a general context, spread evenly throughout the entire workplace, and not directed at someone in particular. While the definition of "sexual harassment" and the standards that need to be met to prove its presence in the workplace are ever-evolving, one thing is certain, the en banc decision by the Eleventh Circuit Court of Appeals affords employees great workplace protections.