



Founding Partner Mathew B. Tully answers whether being called “cutie” is grounds for a lawsuit with NOVA Legal Beat

NOVA Legal Beat: Is Being Called ‘Sexy’ Grounds for a Lawsuit?

Q.

I work for a real estate company and my boss keeps calling me “cutie” and “sexy,” though he has not made any sexual advances toward me. Is that enough to support a hostile work environment claim?

A.

Title VII of the Civil Rights Act prohibits employers from discriminating “against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” Without question, a supervisor’s sexual harassment can negatively impact a subordinate’s conditions of employment. But a few tasteless comments made by a supervisor alone may not create a hostile work environment. It may be a different story if the comments are extremely disturbing, incessant and clearly unwelcome. “Not all sexual harassment that is directed at an individual because of his or her sex is actionable. Title VII does not attempt to purge the workplace of vulgarity,” the U.S. 4th Circuit Court of Appeals said in *Hopkins v. Baltimore Gas & Electric Company*.

In this case, a male employee claimed his supervisor of the same gender harassed him and created a hostile work environment by making inappropriate comments such as, “You only do that so you can touch me” after they bumped into each other and “Ah, alone at last” when in the bathroom together. However, the 4th Circuit affirmed a lower court’s

dismissal of the case. "A handful of comments spread over months is unlikely to have so great an emotional impact as a concentrated or incessant barrage," the appellate court said. Hostile work environments involve unwelcome, sex-based conduct that "was sufficiently severe or pervasive to alter the conditions of her employment and create an abusive work environment," and it can be linked to the employer, the U.S. 4th Circuit noted in *Colie et al. v. Carter Bank & Trust, Inc.*

(2010). *Colie*

, for example, involved a female bank supervisor who repeatedly called female employees "baby" and told them, among other things, they looked "sexy," had "sexy" legs and looked "sexy" with their hair down. And even though the employees complained to bank executives about this inappropriate, unwelcome conduct, it continued. While the employer claimed the employees alleged "nothing more than the sporadic use of rude language and occasional teasing," the court found this characterization to be "in sharp contrast to the factual allegations." It noted, "When the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment, Title VII is violated." Consequently, the court refused the employer's request to dismiss the case. Employees should not let employers get away with sexual harassment that changes the conditions of their employment. They should not tolerate a hostile work environment and should immediately contact an employment law attorney who can prepare for them a discrimination lawsuit. Mathew B. Tully is the founding partner of Tully Rinckey PLLC. Located in Arlington, Va. and Washington, D.C., Tully Rinckey PLLC's attorneys practice federal employment law, military law, and security clearance representation. To speak with an attorney, call 703-525-4700 or to learn more visit

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