

Gender-Specific Vulgar Language May Constitute Harassment **Even if the Comments are not Directed at the Plaintiff**

Reeves v. C.H. Robinson Worldwide, Inc. (C.A. 11), ___ F.3d ___



By: **Todd M. Jackett**

On January 20, 2010, the Eleventh Circuit Court of Appeals decided the case of *Reeves v. C.H. Robinson Worldwide, Inc.* (C.A. 11), ___ F.3d ____. The issue before the Court was whether gender-specific vulgarity constitutes sexual harassment when the comments are not directed towards the plaintiff.

The trial court had granted summary judgment to the employer finding that “the offensive conduct was not motivated by [the plaintiff’s] sex, because the derogatory language in the office was not directed at her in particular” and “because the language was used ... in the presence of all employees, ‘both men and women.’” Thus, the trial court concluded that the plaintiff was not singled out for adverse treatment on account of her gender.

The plaintiff previously worked in the Merchant Marines and “was no stranger to ... coarse language.” During her employment with C.H. Robinson, the plaintiff worked in a cubicle and overheard other employees use offensive language. The offensive language included gender-neutral derogatory language and gender-specific vulgar comments, such as “bitch” and “whore.” Although the offensive language was never directed at the plaintiff, the vulgar comments, even the gender-specific comments, were directed at both males and females alike.

In reviewing the trial court’s decision, the Court noted that not all profane and sexual language constitutes sexual harassment and that an employee must demonstrate that the employer discriminated against her because of her gender. In examining the derogatory language used in the workplace, the Court distinguished gender-neutral vulgar comments from gender-specific derogatory language.

The Court held that the fact that the gender-specific vulgar comments were not directed at the plaintiff was insufficient to negate a claim of sexual harassment. “It is enough to hear co-workers on a daily basis refer to female colleagues as ‘bitches,’ ‘whores’ and ‘cunts,’ to understand that they view women negatively, and in a humiliating or degrading way.”

The Court rejected the notion that directing the gender-specific offensive language to both males and females demonstrates that the use of the language was not motivated by the plaintiff’s gender. The Court found that directing a female-specific derogatory comment to a man “belittles him precisely because it belittles women” and, thus, the comments were still motivated by the plaintiff’s gender.

Although the Court held that a “generally vulgar workplace whose indiscriminate insults and sexually-laden conversation [do] not focus on the gender of the victim” would not rise to the level of sexual harassment, the court held that “[e]vidence that co-workers aimed their insults at a protected group may give rise to the inference of an intent to discriminate on the basis of sex, even when those insults are not directed at the individual employee.” Thus, the Court held that gender-specific vulgar comments are sufficient to demonstrate a viable claim of sexual harassment.

Although the *Reeves* decision was issued by a federal court, its holding has potential far-reaching impact on employers in Ohio. Ohio courts previously have held that use of sexually explicit language in the workplace, including the use of words similar to those used by the employees in *Reeves*, does not necessarily rise to the level of sexual harassment. Ohio court, however, rely on federal case law in analyzing discrimination and sexual harassment claims. Thus, the holding in *Reeves* certainly may signal a trend that has the potential to affect similar discrimination claims in Ohio.

While employers should discourage the use of any and all vulgar comments in the workplace, employers must have a no-tolerance policy when it comes to gender-specific vulgarity. The use of such language alone may be sufficient to establish a sexual harassment claim.

As always, as soon as an employer becomes aware of potential sexual harassment, the employer possesses a duty to investigate the claims and to take corrective action to insure that the harassing behavior ceases.

If you would like a copy of the full opinion or if you have any other questions regarding Employment Practices Liability, feel free to contact one of our Practice Area Attorneys.

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