Minnesota Supreme Court: Standard for Workplace Sexual Harassment Should Reflect Today’s ‘Societal Attitudes’

On Wednesday, June 3, the Minnesota Supreme Court upheld the “severe or pervasive” standard used in workplace sexual harassment cases. But in doing so, it held that lower courts interpreting the standard must consider today’s definition of appropriate workplace conduct.

The “severe or pervasive” standard was developed from Harris v. Forklift Systems, a 1986 U.S. Supreme Court case. It established that harassment that was so “severe or pervasive” that it affected the conditions of the victim’s employment and created a hostile working environment was actionable under Title VII. In subsequent years, Minnesota federal and state courts have applied the “severe or pervasive” standard under both Title VII and the Minnesota Human Rights Act.

In Kenneh v. Homeward Bound, Inc., No. A18-0174, Plaintiff Assata Kenneh alleged that her male coworker created a hostile work environment by repeatedly making sexually-suggestive comments and gestures to her after being told to stop and being provided sexual harassment training. The Hennepin County District Court granted summary judgment to Homeward Bound, stressing the “high bar” set by Minnesota
precedent for what constitutes “severe or pervasive” conduct in sexual harassment cases.

The Minnesota Supreme Court affirmed in part, reversed in part and remanded. The Court affirmed the “severe or pervasive” standard borrowed from Title VII cases, stating it “reflects a common-sense understanding that, to alter the conditions of employment and create an abusive working environment, sexual harassment must be more than minor.”

However, the Court went on to clarify that an analysis of the severe or pervasive standard requires considering what is appropriate workplace behavior by today’s standards. Specifically, the Court stated, “[f]or the severe-or-pervasive standard to remain useful in Minnesota, the standard must evolve to reflect changes in societal attitudes toward what is acceptable behavior in the workplace. . . . Today, reasonable people would likely not tolerate the type of workplace behavior the courts previously brushed aside as an ’unsuccessful pursuit of a relationship,’. . . or ‘boorish, chauvinistic, and decidedly immature[.]’”

The Court expressly cautioned lower courts against usurping the role of a jury when evaluating a claim on summary judgment, stating that whether the alleged harassment was sufficiently severe or pervasive is “generally a question of fact for the jury.” The Court acknowledged, however, that there may be occasion where no reasonable jury could find the alleged behavior was objectively abusive or offensive for purposes of summary judgment.

Ultimately, this decision may make it difficult for employers to prevail on sexual harassment claims at summary judgment. As always, it remains critical for employers to provide frequent training to employees on acceptable workplace behavior, to provide clear avenues for employees to make complaints of workplace sexual harassment, to promptly and thoroughly investigate any complaints made, and to provide consistent disciplinary measures when appropriate.

© 2020 Faegre Drinker Biddle & Reath LLP. All Rights Reserved.

Source URL: https://www.natlawreview.com/article/minnesota-supreme-court-standard-workplace-sexual-harassment-should-reflect-today-s