

CARTOONS, PIN-UP PHOTOS, VERBAL ABUSE AS SEXUAL HARASSMENT

The United States District Court for the Middle District of Florida, in Jacksonville, on February 1, 1991, held that workplace display of posters and calendars showing nude women in sexually suggestive or submissive poses and demeaning remarks by male supervisors and employees would, in the eyes of a "reasonable woman" constitute sexual harassment prohibited by Title VII of the Civil Rights Act of 1964.

Similarly, the U. S. Court of Appeals for the Ninth Circuit Court adopted a similar "reasonable woman" standard and stressed that employers should take strong and effective steps to remedy sexual harassment in the workplace. The Ninth Circuit case involved objections from a female employee who had received unsolicited and unwelcome notes from a male co-worker.

The material deemed to be objectionable in the Florida case consisted of a pictorial dart board and pictures and posters, some of them attached to advertisements of tool supply companies, and featuring nude or scantily clad women, some of them in what the Court identified as "... various stages of undress and in sexually suggestive or submissive poses."

The case is likely to have widespread impact throughout the nation, as it is unlikely that a higher court or courts in other regions or jurisdictions would rule contradictory to the rationale applied by the Florida court. The Ninth Circuit Court ruling follows rationale similar to that utilized in the Florida case.

Employers and their representatives are liable for the harassment which may occur from sexually explicit cartoons, posters, drawings, and verbal remarks which may be offensive or intimidating and which may constitute sexual harassment.

The plaintiff in the Florida case was a female welder who was a member of a nearly exclusive male work force. The shipyard employer employed two women and 958 men in 1980, seven women and 1,010 men in 1983, and six women and 846 men in 1986.

Some of the circumstances which supported the findings of the Florida Court included:

- ___ The plaintiff repeatedly complained to her supervisors regarding the nude and pornographic posters and calendars.
- ___ The plaintiff alleged, that in retaliation for her complaints, she was subjected to verbal harassment by male employees and her supervisors.
- ___ Employees described the shipyard as "a boy's club" and "more or less a man's world."
- ___ The employer had no rules forbidding the objectionable material and apparently made little if any effort to discourage or prevent posting of the material.
- ___ Management representatives "...condoned these displays; (and) often they had their own pictures."
- ___ Management did not adequately investigate the complaints.
- ___ One supervisor informed male members of the work force that the men had "constitutional rights" to post the pictures.
- ___ The plaintiff's complaints to management were met by increased harassment instead of corrective action.
- ___ A door of a fitter's trailer contained the words "Men Only," following plaintiff's complaints.
- ___ Female employees testified that there was an increase in the posting of pictures and in the verbal harassment following the complaints.
- ___ The plaintiff was subjected to crude and severe verbal comments concerning her sex "in the presence of the pictures of nude or partially nude women."
- ___ A management representative had informed the plaintiff that rules against vulgar and abusive language did not apply to the "cussing" commonly heard there.
- ___ The Court's rationale was similar to rationale utilized in racial discrimination and other sexual harassment claims.
- ___ The "totality of circumstances" (including sexual remarks, sexual jokes, sexually oriented pictures of women, and non-sexual rejection of women by co-workers) was examined by the court to determine if a sexual harassment violation had occurred.
- ___ The Court ruled that there were sufficient signs present that the employer had "constructive knowledge" and that a "reasonably alert management" would have been aware of the problem and its effects.

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The Florida Court ruling is significant in that it concluded or indicated:

- Sexual harassment has a profound impact on women's job performance and promotes stereotyping of women in terms of sex-object status.
- The effects of sexual harassment in the workplace include emotional upset, reduced job satisfaction, an increase in women quitting jobs or getting transferred or being fired, and discouraging women from seeking jobs and promotions.
- There is a correlation between the presence of pictures and sexual comments and the level of sexual preoccupation of male workers.
- The conduct objected to in the case created and contributed to a sexually hostile work environment.
- Sexually explicit materials in the workplace may constitute sexual harassment (with accompanying employer liability), even though society, as a whole, may appear to tolerate such materials.
- Verbal comments, such as those pertaining to a co-worker's legs, body, or style of dress (male or female) may be contested even if such comments are intended as compliments.

The Florida court, in effect, criticized the representatives of the employer for failure to take prompt, effective remedial action regarding the sexual harassment about which they knew or should have known.

The Florida Court and the Ninth Circuit U. S. Court of Appeals, in two separate cases, also applied what they defined as a "reasonable woman" standard, namely: "The objective standard asks whether a ... 'reasonable woman' would perceive that an abusive working environment has been created."

The Ninth Circuit U. S. Court of Appeals decision is also enlightening in that the Court ruled that sexual harassment can occur "...even when harassers do not realize that their conduct creates a hostile work environment."

Well-intentioned compliments "... can form the basis of a sexual harassment cause of action..." Decisions such as this one may have the effect of making nearly every sex-or romance-related comment, including comments which compliment personal appearance, a potential basis for sexual harassment.

Employers and their representatives should be aware of visually displayed materials and verbal comments, notes, and cartoons, and similar materials and how they affect workers, and appropriate steps should be taken by supervisors to object to the display of such materials and to see that they are removed without incident when they appear.

Citations:

1. Robinson v. Jacksonville Shipyards, Inc., 1991 U.S. App. LEXIS 794 (Feb. 1, 1991).
2. Ellison v. Brady, 1991 U.S. App. LEXIS 875 (Jan. 23, 1991).