Number 53
November 1993
© 1993

David M. Lawrence
Editor

Published by the
Institute of Government
The University of
North Carolina at
Chapel Hill

Local Government Law Bulletin

Supreme Court Establishes Standard for Hostile Environment Sexual Harassment

Stephen Allred

On November 9, 1993, the United States Supreme Court, in *Harris v. Forklift Systems, Inc.*,[1] answered this question: must an employee prove that she suffered severe psychological injury, as opposed to some lesser standard, in order to prevail in her claim that sexual harassment in the workplace has created an unlawfully hostile environment? In an opinion written by Justice Sandra Day O'Connor, the Court unanimously rejected the requirement that a plaintiff prove psychological injury and adopted an objective standard of review for hostile environment claims.

This bulletin provides a brief background on sexual harassment hostile environment claims decided by the lower courts, summarizes the opinion of the U.S. Supreme Court in the *Harris* case, and offers some observations on the possible effects of the Court's decision.

The Setting for Hostile Environment Claims

Sexual harassment is one type of sex discrimination prohibited under Title VII of the 1964 Civil Rights Act.[2] Since 1980, regulations of the Equal Employment Opportunity Commission (EEOC) have prohibited unwelcome sexual conduct that "has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."[3] Complaints about this kind of prohibited conduct are commonly referred to as hostile environment claims.

The author is an Institute of Government faculty member who specializes in employment law.

[1] No. 92-1168, 1993 U.S. LEXIS 7155 (U. S. Sup. Ct. Nov. 9, 1993).

[2] 42 U.S.C. §2000e *et seq.*

[3] 29 C.F.R. § 1604.11(a).

In 1986, the U.S. Supreme Court made clear in *Meritor Savings and Loan v. Vinson*[4] that an employee may bring a claim of sexual harassment by proving the existence of an environment made hostile by unwelcome sexual conduct. The Court cited the EEOC definition of hostile environment with approval, but did not establish a "bright line" test to determine when such harassment had occurred. The Court held that not all inappropriate conduct that might occur in the workplace constituted sexual harassment; rather, the harassment had to be sufficiently severe or pervasive to alter the conditions of the victim's employment, creating an abusive environment.

After the *Vinson* case was decided, a split developed among the federal appellate courts on the appropriate standard of proof to apply to hostile environment claims. One approach, typified by the Ninth Circuit Court of Appeals, is the "reasonable woman" standard.[5] Under this standard, a female employee stated a prima facie case of a hostile environment resulting from sexual harassment when she alleged conduct that a reasonable woman would consider sufficiently severe or pervasive to alter working conditions. The Ninth Circuit adopted the perspective of a reasonable *woman* as opposed to the more conventional reasonable *person* test, reasoning that "a sex-blind reasonable person standard tends to be male-biased and tends to systematically ignore the experiences of women."[6] The other approach, adopted by the Sixth Circuit,[7] the Eleventh Circuit,[8] and the Federal Circuit[9], holds that a hostile environment may be shown only where the plaintiff's psychological well-being was affected to the point that the work environment could fairly be characterized as "poisoned."

The Lower Court Decision in *Harris*

Teresa Harris was employed by Forklift Systems, Inc., of Nashville, Tennessee, as a rental manager. The president and owner of the company is Charles Hardy. The Federal

---

[4] 477 U.S. 57 (1986).

[5] *Ellison v. Brady*, 924 F.2d 872 (9th Cir. 1991).

[6] 924 F.2d at 879.

[7] *Rabidue v. Osceola Refining Company*, 805 F.2d 611, 620 (6th Cir. 1986), *cert. denied*, 481 U.S. 1041 (1987) ("the plaintiff must prove that the defendant's conduct would have interfered with a reasonable individual's work performance and would have affected seriously the psychological well-being of a reasonable employee, and that she did in fact suffer . . . some degree of injury as a result of the abusive and hostile work environment).

[8] *Vance v. Southern Bell Telephone & Telegraph Co.*, 863 F.2d 1503, 1510 (11th Cir. 1989) ("an actionable harassment claim must establish by the totality of the circumstances the existence of a hostile work environment which is severe enough to affect the psychological stability of a minority employee").

[9] *Downes v. FAA*, 775 F.2d 288, 292 (Fed. Cir. 1985) ("the offensive conduct must be sufficiently pervasive so as to alter the conditions of employment, and be sufficiently severe and persistent to affect seriously the psychological well-being of an employee").

District Court for the Middle District of Tennessee found that Harris was the object of a continuing pattern of sex-based derogatory conduct from Hardy, and made the following findings of fact:[10]

> (a) Hardy stated to plaintiff in the presence of other employees at Forklift, "You're a woman, what do you know," on a number of occasions during plaintiff's employment, and "You're a dumb ass woman," at least once.
>
> (b) Hardy, on a number of occasions, stated to plaintiff in the presence of other employees at Forklift, "we need a man as the rental manager."
>
> (c) Hardy, in front of a group of other employees at Forklift and a Nissan factory representative stated to plaintiff, "Let's go to the Holiday Inn to negotiate your raise." However, plaintiff knew this was meant as a joke, and treated it as a joke at the time. This comment must be viewed in context of the fact that the company often conducted management meetings at a nearby Holiday Inn.
>
> (d) Hardy asked plaintiff and other female employees, but not male employees of Forklift, to retrieve coins from his front pants pocket.
>
> (e) Hardy threw objects on the ground in front of plaintiff and other female employees of Forklift, but not male employees, and asked them to pick the object up, thereafter making comments about female employees' attire.
>
> (f) Harris commented with sexual innuendoes about clothing worn by plaintiff and other female employees of Forklift, but not male employees.[11]

The district court found that as a result of Hardy's behavior Harris experienced anxiety and emotional upset. After Harris complained to Hardy and he continued to make derogatory comments to her, she resigned and filed a complaint of sexual harassment.

The district court applied the standard of proof adopted by the Sixth Circuit in the *Rabidue* case noted above, holding that although Harris had been subject to inappropriate sexual comments, the comments were not "so severe as to be expected to seriously affect plaintiff's psychological well-being," as required by that standard.[12] The court characterized Hardy's behavior as vulgar and crude, but it nonetheless held that Harris had failed to establish the elements of a hostile environment claim and dismissed her case.

---

[10] 61 Fair Empl. Cas. (BNA) 240 (M.D. Tenn. 1991).

[11] 61 Fair Empl. Cas. (BNA) at 242.

[12] Id. at 245.

The Sixth Circuit Court of Appeals affirmed the district court ruling without an opinion.[13] Harris petitioned the Supreme Court for certiorari, and the Court granted review.[14] The case was argued before the Court on October 13, 1993.

The Supreme Court's Decision in *Harris*

The Supreme Court's decision is unanimous and short. Justice Sandra Day O'Connor, writing for the Court, began by noting the conflict among the lower courts: must conduct, to be actionable under Title VII as a hostile work environment, seriously affect an employee's psychological well-being and require proof of injury? Noting that the Court had previously ruled in the *Vinson* case that sexual harassment discrimination is not limited to tangible, economic discrimination but includes a prohibition on requiring people to work in hostile or abusive environments, Justice O'Connor stated that the Court was reaffirming that ruling in the *Harris* case.

The Court rejected the approach taken by the district court in *Harris* which required proof of psychological damage. Instead, Justice O'Connor stated, the Court in reaffirming *Vinson*

> takes a middle path between making actionable any conduct that is merely offensive and requiring the conduct to cause a tangible psychological injury. Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment--an environment that a reasonable person would find hostile or abusive--is beyond Title VII's purview. Likewise, if the victim does not subjectively perceive the environment to be abusive, the conduct has not actually altered the conditions of the victim's employment and there is no Title VII violation.
>
> But Title VII comes into play before the harassing conduct leads to a nervous breakdown. A discriminatorily abusive work environment, even one that does not seriously affect employees' psychological well-being, can and often will detract from employees' job performance, discourage employees from remaining on the job, or keep them from advancing in their careers.[15]

Justice O'Connor rejected the approach relied on by the district court in focusing on whether Hardy's conduct seriously affected Harris' well-being or led her to suffer injury. Simply stated, Title VII does not require a showing of concrete psychological harm. The critical question, stated the Court, is whether the environment would reasonably be perceived, and is perceived, as hostile or abusive.

---

[13] 976 F.2d 733 (6th Cir. 1992).

[14] 113 S.Ct. 1382 (1993).

[15] 1993 U.S. LEXIS 7155, *9.

Justice O'Connor conceded that the standard of proof for hostile environment claims is not, and indeed cannot be, a mathematically precise test. But in determining whether an environment is hostile or abusive, a court must look at all the circumstances, which may include

> the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. The effect on the employee's psychological well-being is, of course, relevant to determining whether the plaintiff actually found the environment abusive. But while psychological harm, like any other relevant factor, may be taken into account, no single factor is required.[16]

The Court reversed the judgment of the court of appeals and remanded the case to the district court for a determination of whether a hostile environment existed under the standard set forth above.

Justice Antonin Scalia and Justice Ruth Bader Ginsburg joined in Justice O'Connor's opinion, but they each wrote separate concurrences. At the oral argument on this case October 13th, both justices asked numerous questions of counsel for both sides and were clearly interested in the question before the court.

Justice Scalia's concurrence lamented the fact that the Court's standard--that the challenged environment would create an objectively hostile or abusive work environment that a reasonable person would find hostile or abusive--is not a very clear standard. But be that as it may, he then added, "I know of no alternative to the course the Court today has taken. . . I know of no test more faithful to the inherently vague statutory language than the one the Court today adopts."[17]

Justice Ginsburg's concurrence stated that "the critical issue . . . is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed."[18] She added that the inquiry of the court should center on the question of whether the discriminatory conduct has interfered with the plaintiff's work performance, but that it would suffice to show that a reasonable person subjected to such conduct would find it more difficult to do the job. In other words, under Justice Ginsburg's analysis, the mere fact that Harris' job performance did not decline does not bar her from proving the existence of a hostile work environment.

---

[16] 1993 U.S. LEXIS 7155, *10.

[17] 1993 U.S. LEXIS 7155, *13.

[18] 1993 U.S. LEXIS 7155, *15.

Implications of the Decision

Two aspects of the Court's decision in the Harris case are worth noting. First, the Court has rejected an opportunity to make it more difficult for plaintiffs in sexual harassment cases to win. If the Court had followed the standard of the Sixth Circuit Court of Appeals and required a plaintiff to show severe psychological injury as a result of a hostile work environment, most plaintiffs would not prevail. By adopting a less stringent standard, the Court signals its willingness to permit sexual harassment claims to be brought without unduly burdening plaintiffs. Second, the Court declined the opportunity to adopt the Ninth Circuit's "reasonable woman" test, and instead has adopted the more traditional "reasonable person" standard. As a result of the Court's ruling, lower courts will not be required to examine alleged differences in sensitivity between men and women to sexual matters in the workplace, but rather will simply inquire whether a reasonable person in this instance would find the conduct sufficiently bad to constitute a hostile and abusive environment.

It is perhaps surprising that the Court rendered a unanimous decision in this case, given the recent tendency of the Court to divide on Title VII questions.[19] It is clear from this decision that sexual harassment claims, particularly hostile environment claims, will continue to be brought by employees of both public and private employers.

The lesson for managers in public employment--and for the attorneys who represent public bodies--is this: sexual harassment liability may be found where an employee complains about conduct that a reasonable person would find abusive and hostile. Employers should re-examine their workplaces to assess their potential liability under the standard announced in *Harris* not only for the acts of supervisors (as in this case), but for the acts of co-workers as well.

---

[19] See, for example, Local Government Law Bulletin No. 49 (June 1993), summarizing the five-to-four split on the question of proof of disparate treatment race discrimination claims earlier this year in *St. Mary's Honor Center v. Hicks.*

The Institute of Government of The University of North Carolina at Chapel Hill has printed a total of 910 copies of this public document at a cost of $255.25 or $.28 per copy. These figures include only the direct cost of reproduction. They do not include preparation, handling, or distribution costs. This publication is printed on permanent, acid-free paper in compliance with the North Carolina General Statutes.