

New Ruling Requires Harassment To Be "Targeted"

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A recent decision handed down by the Federal Appeals Court in Chicago has further refined the parameters of a sexual harassment claim under Title VII. Judge Posner authored the decision which concluded that "Title VII is not a code of civility" and that an employee in the American workplace cannot recover damages simply because one is offended by a co-employee's conduct or language at work. Rather, in order to rise to the level of a hostile work environment actionable under Title VII, an individual employee must show that she (or he) was the "target" of the offensive conduct or language. Thus, the mere fact that an employee believes another employee's conduct or language is offensive in general or offensive to another would not, in most cases, give rise to a claim.

In the case before the court, Carla Yoknis was a part-time school bus driver at First Student, Inc. She complained to the EEOC concerning what she believed was sexual harassment. She claimed that fellow employees would watch pornography on their computers, use foul language, tell vulgar jokes, and gamble at work. She cited several specific incidents of offensive behavior involving her manager: an incident where he called another female bus driver a "fat ass," and an affair he was having with another female driver. Yoknis stated that most of the speech was not directed at her specifically, except that her manager had told her a story about his daughter watching him walk from the shower to his bedroom naked. Yoknis also said that she once approached him about purchasing an Avon product called "Sensual Moments," and his response was that if that was what she wanted, she should join him in his office and shut the door.

In analyzing her claims, the court found that the two, isolated incidents made in her presence failed to create a hostile work environment. The court then drew a distinction between offensive behavior which is targeted towards an individual (such as the "Sensual Moments" comment) and offensive behavior which is not so targeted (such as the "fat ass" comment about a co-worker). The court found an offensive remark rises to the level of harassment and is actionable only when the individual to whom the remark was made or whose presence it was made in is within what the court termed the "target area" of the offensive remark. For example, if an employee were to make a remark that was offensive toward women, a male employee would not have a claim of harassment under Title VII. However, the court clarified that conduct rises to the level of harassment should be examined contextually. If the offensive remark is not harassment on its face, such as when the plaintiff's manager called a fellow female employee a "fat ass," then the plaintiff must demonstrate to the court why this remark is offensive to her in particular or to women in general. Moreover, the court held that an offensive remark does not rise to the level of an actionable claim under Title VII simply because it includes reference to a protected class of people. While offensive, a male employee's reference to a female

employee as a "fat ass" does not, in and of itself, constitute harassment based upon gender. Rather, there must be something else associated with the offensive remark (what the court referred to as "context") that implies hostility towards a protected class, such as one's gender.

The court's decision is an important one for local employers. The court made clear that Title VII is not a civility code that outlaws any and all offensive comments or actions in the workplace. The court went so far as to state the workplace would be a "seething cauldron" if workers could complain of being offended by language or actions which they have heard or seen but which are unrelated to their gender, race or other protected characteristic. While employers want to eliminate all offensive comments or actions in the workplace, liability will only be present if such conduct is targeted at an individual due to a protected characteristic.