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OFFENSIVE RADIO PROGRAM LEADS TO SEX HARASSMENT CLAIM FOR JURY TO DECIDE

In a recent decision of first impression, the Eleventh Circuit Court of Appeals clarified that a plaintiff may maintain a lawsuit based on a sexually hostile work environment, even if the offensive language was not directed personally at the plaintiff.

In this case, there were no allegations of sexual propositions, offensive touching, or inappropriate comments relating to the plaintiff. Rather, the plaintiff alleged that she was exposed to sexually degrading comments and language at work on a daily basis. In addition to daily offensive comments by her co-workers, the plaintiff complained of degrading language on a radio program that was routinely played on a radio in the office. (The Court's opinion did not name the offensive radio program or station.) The plaintiff attempted to change the radio program, but someone always changed the station back to the radio program at issue. The plaintiff complained to her supervisor about the offensive language being used in the office and on the radio program, but nothing changed.

A lower court dismissed the plaintiff's case, because the harassment was not specifically directed at her, or her gender. The Court of Appeals, however, found that it was no defense that men and women equally were exposed to the offensive language, because the language by its very nature was more offensive and degrading to women than to men. The language "had a discriminatory effect on [the female plaintiff] because of its degrading nature," the Court reasoned. The sex-based offensiveness of the language, combined with the day-to-day



pervasiveness of the offensive language, made out a case of sex harassment to be decided by a jury.

In light of this decision, employers should review their anti-harassment policies and practices to ensure that degrading language, regardless of the source, and regardless of whether it is directed to a particular person, is clearly prohibited. In addition, it may be prudent for employers to consider whether they need a policy that places certain limits and parameters on certain types of media, such as radios and internet videos, in the workplace.

The case is *Reeves v. C. H. Robinson Worldwide, Inc.*, No. 07-10270 (11th Cir., April 28, 2008).

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