

4th Circuit: Pictures and Speech that Sexualize the Workplace Can Support Claim

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Sexually explicit language, daily use of demeaning words to refer to women, and the prevalence of pictures of nude or scantily clad women throughout the workplace present a jury question as to whether an employee was subjected to a hostile work environment in violation of Title VII, according to the 4th U.S. Circuit Court of Appeals in an unpublished opinion.

The City of Baltimore, Md., has employed Lynette Harris as an electrician since 1988. By 1994, the city had promoted Harris twice. In 2003 and 2004, Harris applied and interviewed for two separate promotions. Each time, the city offered the position to a male candidate. In December 2004, the city reassigned Harris to the electrical motor shop supervised by James Gernhart. Harris claimed that while employed in Gernhart's shop, she was repeatedly subjected to profane and sexually explicit language by male co-workers, including details of male co-workers' sexual encounters and discussions of the female anatomy. In addition, Harris claimed that male co-workers routinely referred to her and other women by pejoratives and as "troublemakers" who "didn't belong in those jobs." Harris further claimed that provocative pictures of women, specifically women dressed in a scantily clad manner, in bathing suits, or simply naked, were displayed on bulletin boards, under glass tabletops, and in offices. Several of Harris's co-workers confirmed her allegations.

Harris repeatedly complained about the working conditions in Gernhart's shop and requested, but was denied, a transfer. Eventually, in January 2005, Harris wrote a letter to the city's personnel department reiterating her earlier complaints and again requesting a transfer out of Gernhart's shop. After an investigation, the city ordered the removal of the provocative pictures and the city transferred Harris in April 2005.

In September 2006, Harris sued the city, alleging that the work environment in Gernhart's shop subjected her to a hostile work environment in violation of Title VII and 42 U.S.C. §1983. Harris also brought a Title VII failure to promote claim and pendent state law claims. Ultimately, the district court dismissed all of Harris' claims. In particular, the district court concluded that Harris failed to present sufficient evidence that the offending conduct was because of her sex, or sufficiently severe or pervasive to alter the conditions of her employment, as required to support a hostile work environment claim. The 4th Circuit, reviewing the facts in the light most favorable to the plaintiff (the non-moving party), reversed the district court only as to Harris's Title VII hostile work environment claim and associated 42 U.S.C. §1983 claim.

In reaching its conclusion, the 4th Circuit rejected the city's argument that the objectionable speech and conduct must be directed at the plaintiff. Instead, the critical inquiry was whether the plaintiff's environment was hostile because of her sex, the 4th Circuit held. Sexually explicit language, and the prevalence of nude or scantily clad women throughout Gernhart's shop sexualized the workplace, and, therefore, were sufficient to support a finding that Harris was the victim of discrimination because of her sex. The daily use of demeaning words to refer to women also satisfied the "because of

sex” requirement, according to the 4th Circuit.

The plaintiff must prove that the alleged harassment was severe or pervasive, but not both, the 4th Circuit emphasized. Moreover, the appropriate inquiries are whether the speech and conduct were particularly offensive to women, and whether the speech and conduct support a conclusion that the harasser was motivated by general hostility to the presence of women in the workplace. The sexually explicit pictures located throughout Gernhart’s shop and the daily use of profane and sexual language were sufficient to support a finding that the work environment was particularly offensive to women, and objectively and subjectively severe or pervasive, according to the 4th Circuit.

As to Harris’ Title VII failure to promote claim, the 4th Circuit determined that even if she had more experience than the successful candidates, she failed to produce evidence to negate the city’s legitimate non-discriminatory reason for not selecting her for the promotions, namely that the successful candidates received higher interview scores on questions designed to evaluate the technical knowledge of the candidate.

Harris v. City of Baltimore, 4th Cir. No. 09-1446 (May 6, 2011).

Professional Pointer: Employers would be well advised to inspect work environments to ensure that no inappropriate pictures or images are present. Also, the overall work environment is as important as the conduct directed toward a specific employee when analyzing a Title VII hostile work environment claim.

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Editor’s Note: This article should not be construed as legal advice.

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