

The Trouble With The So-Called “Equal Opportunity Harasser” – Another Cautionary Case

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Under Title VII, if a supervisor is obnoxious and abusive to everyone in the workplace, subjecting women and men alike to a barrage of insults, vulgar innuendo, and sexual propositions, the employer is not liable for hostile work environment sexual harassment under Title VII. The rationale is that if a person is an “equal opportunity harasser” then the harassment is not “because of sex” and thus Title VII provides no remedy. Therefore, the equal-opportunity harasser defense may let employers off the hook for liability for sexual harassment, depending on the facts of the case and the theory upon which the lawsuit is based.

But not so fast. As in many areas of employment law, state and local laws and ordinances – and case law interpreting them – pose challenges for employers. In some instances state courts will follow precedent under Title VII when interpreting and applying state law – except where the language of state statutes is interpreted as diverging from the federal law. In fact, the Minnesota Supreme Court’s newly released opinion in *Rasmussen v. Two Harbors Fish Co.* illustrates the pitfalls for employers under state law.

In *Rasmussen*, the boss (and owner) was accused of subjecting employees to a number of verbal and physical assaults of a sexual nature. The lower court, in a bench trial, determined that the Plaintiffs had not proven their case of sexual harassment. But on appeal, the Minnesota Supreme Court reversed in part and remanded the case, holding that the fact that the sexually explicit behavior was directed at men as well as women was not relevant to a determination of whether the Plaintiffs proved a claim for hostile work environment sexual harassment under the Minnesota Human Rights Act, 363A.03 at subsection 43(3).

So while the “equal opportunity harasser” defense may remain viable in a Title VII case, it certainly is not the first line of defense and in some instances will not be a defense at all under state law. At the risk of stating the obvious, when faced with an “equal opportunity harasser,” employers are well advised to take prompt and effective action so that the behavior is corrected before it becomes a claim.

Additional Resources

Rasmussen case link: [Rasmussen v. Two Harbors Fish Co.](#)

Minnesota Human Rights Act link: [2012 Minnesota Statutes](#)

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