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Recent Decision Points Out that “Equal Opportunity Offender” Is Not Always a Defense to Harassment Claims

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To state an actionable claim under Title VII for harassment, an employee must be able to show that the alleged offender's conduct is based on a protected classification, such as gender. Employers often successfully respond to harassment claims with evidence that the alleged offender did not single out an employee based on a protected class, but was instead an equal opportunity offender who treated everyone equally badly. A recent decision from the United States Court of Appeals for the Fourth Circuit, which is the Federal Circuit in which North Carolina is located, has placed a limit on the reach of this defense in a case where the conduct of such an equal opportunity offender focused on the gender of an employee.

In *Equal Employment Opportunity Commission v. Fairbrook Medical Clinic*, the EEOC brought suit on behalf of a female physician formerly employed by the Clinic. The Commission presented evidence that the owner of the Clinic, who was the former employee's supervisor, made harassing comments to the employee physician concerning her anatomy, sex life, breastfeeding her child, along with making other references to women using derogatory slurs and demeaning descriptions. The employee physician informed her supervisor on a number of occasions that his choice of language and comments were offensive and unwelcomed. Ultimately, the employee resigned her position.

The Clinic prevailed on the Commission's claim at the trial court level by arguing that the evidence showed only that the supervisor was a crude person and made vulgar comments to both men and women. On appeal, The Fourth Circuit rejected this argument and found that although the supervisor made offensive remarks in front of both males and females, his use of “sex specific and derogatory terms” indicates that he intended to demean women. The Court further held that a jury could conclude that he intended such remarks to make the female employees feel embarrassed and uncomfortable. The Court further rejected the Clinic's argument that because all of these remarks and comments took place in a medical office setting, where they routinely deal with human anatomy, that they should be judged by a different standard.

This case should alert employers that they should not rely on the belief that an “equal opportunity harasser” does not pose a threat of potential liability for sexual harassment in the workplace. In addition, this case serves as a reminder that employers should have a written sexual harassment policy, which is published to all employees, and that they should conduct a prompt and thorough investigation following receipt of claims of sexual harassment.

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