

## Is Profanity in the Workplace Grounds for a Sexual Harassment Case? YES Says the 11th Circuit!

(Caution - this post contains explicit language)

by Brian Mahany

Depending on where you work, profanity is a fact of life. What might not be common in an office may be normal in a lumber yard, trucking company or merchant ship. We have all heard the expression "swears like a drunken sailor." The 11th Circuit Court of Appeals, however, ruled that workplace profanity alone may constitute illegal sexual harassment.

Last week the 11th Circuit released an en banc decision in the case *Reeves v. C.H. Robinson Worldwide*. Plaintiff Ingrid Reeves, herself a former merchant seaman, was no stranger to profanity. But when she went to work at a trucking company as a sales rep, vulgar language and profanity became a daily occurrence. Co-workers regularly referred to women as "whores", "bitches", "cunts" and similar language. The language became so bad that after several unsuccessful complaints to both her co-workers and management, Ingrid quit. She then filed suit.

In her complaint, Ingrid said that no one ever directed such slurs at her. Obviously, that conduct would be actionable. Instead, she said she felt very uncomfortable having to listen to daily crude references to women. Even though no one ever directed this vile language at her, the court found that gender specific vulgarity could be enough to base a hostile work environment claim.

To establish a hostile environment claim based on language, the court said that the harassing behavior must be severe or pervasive. The court ruled that "general vulgarity" or "references to sex that are indiscriminate in nature" alone are usually not enough. But when mixed with gender specific references, language alone can make a company liable. Specifically, the court said "a member of a protected group cannot be forced to endure pervasive, derogatory conduct and references that are gender-specific in the workplace, just because the workplace may be otherwise rife with generally indiscriminate vulgar conduct."

What does this mean for employers? Even if employees are not directing foul language at specific employees, gender based slurs such as "slut" or "bitch" and the like are enough to hold the employer liable for a hostile work environment. Technically, using other vulgarities such as scatological references and general sex references would not establish liability. But allowing certain curse words and not others is to invite failure.

If you are an employee working in such an environment, the first step is always to let the offenders know that their language is unwelcome. Of course, if the language continues, alert human resources or management and document both the offensive

language and your attempts to stop it. Many employers take sexual harassment and workplace discrimination seriously. If all efforts fail, however, seek counsel. In most instances, anti-discrimination lawyers will be willing to take your case on a contingent fee meaning you do not have to pay any legal fees unless you win.

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