



WEEKLY LAW RESUME™

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Sporadic Incidents of Alleged Sexual Conduct Insufficient to Create a Hostile Work Environment

Stephanie Brennan v. Townsend & O'Leary Enterprises, Inc., et al.

Court of Appeal, Fourth District (October 18, 2011)

In this case, the Court of Appeal held that judgment for an employer was proper where the plaintiff failed to present sufficient evidence that she was subjected to severe or pervasive workplace harassment based on her gender.

Stephanie Brennan worked at an advertising agency from 1991 to 2005. In 2004, she inadvertently received an e-mail intended for another person that referred to her as "big-titted" and "mindless." Between 2000 and 2003, she witnessed an employee wearing a veil with a plastic penis during a staff meeting, an employee dressed as Santa Claus who asked three females personal questions, and the owner wearing a Santa hat with the word "Bitch" across the brow. Brennan sued the agency for sexual harassment, and the jury found in her favor. The agency moved for a judgment notwithstanding the verdict. The trial court found that there was insufficient evidence to support the jury's finding that Brennan was subjected to severe or pervasive sexual harassment and granted the motion.

The Court of Appeal affirmed the decision of the trial court. To prevail on a hostile work environment claim, an employee must show that the harassment was severe enough or sufficiently pervasive to alter the conditions of employment and create a hostile or abusive work environment because of their sex. Here, Brennan's sole claim for harassment directed at her based on her gender was the 2004 e-mail. The Court found that this incident and the other

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three incidents of alleged sexual harassment within a span of three years did not amount to the kind of pervasive harassment that created a hostile work environment. Rather, they were sporadic and isolated, and thus did not show pervasiveness.

COMMENT

This case stands for the proposition that occasional incidents of boorish behavior in the workplace do not necessarily create a hostile work environment for its employees. To be actionable, alleged sexual harassment cannot be occasional, isolated, sporadic or trivial. Rather, a plaintiff must show a concerted pattern of harassment of a repeated, routine or generalized nature.

For a copy of the complete decision see:

[HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/G042398.PDF](http://www.courtinfo.ca.gov/opinions/documents/G042398.pdf)

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