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Minnesota Counties Human Resource Management Association

Minnesota Court of Appeals Rejects Sexual Harassment Claim

Where Conduct Was Not Physically Threatening or Intimidating
but Merely “Boorish, Chauvinistic and Decidedly Immature”

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On June 1, 2010, the Minnesota Court of Appeals published an opinion that greatly clarified what is actionable sexual harassment under the Minnesota Human Rights Act. While numerous federal courts have provided guidance to the Minnesota courts, the Minnesota appellate courts have been relatively silent on what constitutes conduct severe enough to create a hostile work environment.

In *Geist-Miller v. Mitchell*¹, the court viewed the conduct of a male owner and supervisor to his female employee. The conduct included “sexual banter and unsuccessful pursuit of a relationship with [the employee],” touching her hair, an attempt to kiss her and placing his hand on her leg.

The court, relying heavily on cases from the United States Eighth Circuit Court of Appeals², found the above conduct did not constitute sexual harassment because the harassment did not affect a term, condition or privilege of employment. The court held, as a matter of law, the alleged conduct could not have interfered with “a plaintiff’s ability to perform her job [and] that plaintiff’s allegations that a defendant’s conduct made her ‘uncomfortable,’ ‘embarrassed,’ and ‘upset’ are insufficient to create a genuine issue of material fact on this element of the claim.”

In reaching this decision, the court contrasted this case with that of *Gagliardi v. Ortho-Midwest, Inc.*³ In that case, a supervisor, during a business trip, solicited his female supervisee to come to his hotel room and, when she declined, came to her room and laid down in her bed. He also sat very close to her and put his head on her lap during a limousine ride and gave her a calendar with sexually

¹ *Geist-Miller v. Mitchell*, ____ N.W.2d, (Minn. App. June 1, 2010) (WL 2161793).

² The court cited *Alagna y. Smithville R-II Sch. Dist.*, 324 F.3d 975, 977-78 (8th Cir. 2003) (holding that male teacher’s inappropriate conduct over two-year period, which included touching, comments on appearance, saying “I love you,” exhibiting demeanor of a sexual nature, calls at home, and giving gifts, was not sufficiently severe or pervasive to create hostile environment); *Duncan y. General Motors Corp.*, 300 F.3d 928, 934 (8th Cir. 2002) (holding insufficient to demonstrate hostile workplace conduct that included requesting a relationship with the plaintiff, touching the plaintiff’s hand, asking the plaintiff to draw a picture of a cactus planter depicting a man with the cactus as his penis, and displaying posters identifying plaintiff as the president of the Man Hater’s Club of America).

³ *Gagliardi v. Ortho-Midwest, Inc.*, 733 N.W.2d 171 (Minn. App. 2007).

suggestive photographs of his wife. During another business trip he asked that the baggage be taken to his hotel room and suggested they both change into bath robes and order room service. The court in *Gagliardi* reasoned that this affected a term and condition of the employee's performance given the fact that this occurred during a business trip when the employee was somewhat stranded away from home.

In reaching this decision, the Minnesota Court of Appeals has helped employers, employment lawyers, their insurers and administrators by specifically describing conduct, that while not ideal, does not create liability under the Minnesota Human Rights Act. Comparing *Geist-Miller* with *Gagliardi* provides guidance by illustrating what level of conduct does and does not create actionable sexual harassment.

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