

Sticks and Stones and Apparently Words Can Hurt You

A recent decision by the 11th Circuit Court of Appeals (the federal district which covers Georgia, Florida and Alabama) has suddenly made it far easier for plaintiff employees to assert unlawful harassment claims. At issue in *Reeves v. C.H. Robinson Worldwide, Inc.* was whether pervasive vulgar language in the workplace can be enough to establish a *prima facie* case of harassment. Up to this point, in the 11th Circuit, a plaintiff was required to present evidence of physical touching in order to establish a claim of workplace harassment. Following the *Reeves* decision, "gender [and presumably other protected-class] specific" obscenities can fulfill the "based on" requirement of an unlawful harassment claim, even if the obscene language was not aimed at the plaintiff.

The plaintiff in *Reeves*, Ingrid Reeves, worked in an Alabama office of a Minnesota-based transportation company. She alleged at trial that she was subjected to "gender specific" vulgarities on a daily basis, including blatantly sexist language, nude pictures of women, and a raunchy morning radio talk show. While the vulgar language and crass subject matter was never directed at Ms. Reeves, her claim was based on the fact that it was about females generally and as such created a "hostile work environment."

The employer argued at trial that, because Ms. Reeves' co-workers had been using "gender specific" vulgarities throughout their employment and before she arrived in the department, "her presence was irrelevant to the insults and, therefore, the conduct did not occur on account of her sex." The *Reeves* Court disagreed with the employer, holding that this argument ran counter to the legislative intent of Title VII, which is that workers are to be protected from discrimination based on gender, national origin, religion and race in the workplace. The Court went on to state that "[e]vidence that co-workers aimed their insults at a protected group may give rise to the inference of an intent to discriminate on the basis of sex, even when those insults are not directed at the individual employee." However, the Court was quick to point out that general vulgar language by itself was not enough and that workplace conduct is not "measured in isolation." Instead, the evidence is analyzed "aggregately and in the totality of the circumstances." "The two most important factors in examining a claim is the severity of the vulgar conduct, as well as its pervasiveness."

Accordingly, going forward, employers in the 11th Circuit need to be aware that workplace conduct, specifically vulgar language aimed at a protected group, even if not toward a specific member of that group, will be actionable as a matter of law under Title VII. [Note that even though *Reeves* was a sexual harassment case, we would anticipate that this holding will be applied in the 11th Circuit to all types of unlawful harassment which is actionable under Title VII, which includes race, religion and national origin as well as sexual harassment.] The message of the *Reeves* decision is clear -- employers must be vigilant in assuring a non-offensive work environment, even in the absence of individually-directed comments.

If you have any questions regarding this alert, please feel free to contact [Kyle Young](#), [Chris Parker](#), or any other member of the [Labor & Employment Practice Group](#) at Miller & Martin PLLC.

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

ATLANTA

1170 Peachtree Street,
N.E., Suite 800

CHATTANOOGA

832 Georgia Avenue,
Suite 1000,

NASHVILLE

150 Fourth Avenue North,
Suite 1200, One Nashville Place

Atlanta, GA 30309-7706

Volunteer Building
Chattanooga, TN 37402-2289

Nashville, TN 37219