CALIFORNIA SUPREME COURT FURTHER DEFINES WHAT AN EMPLOYEE IS REQUIRED TO PROVE TO PREVAIL ON HOSTILE WORK ENVIRONMENT SEXUAL HARASSMENT CLAIMS

On April 20, 2006, the California Supreme Court issued a decision in Amaani Lyle v. Warner Brothers Television Productions, et al. The court’s ruling, in favor of Warner Brothers, further defines what an employee needs to prove to make out a case of hostile work environment sexual harassment under California’s Fair Employment and Housing Act (FEHA). In the decision, which employers will welcome, the court underscored an employee’s responsibility to establish not only that conduct was severe or pervasive, but also that it was undertaken because of the employee’s sex. The court also made clear that the graphic nature of the conduct is not determinative in assessing whether an employee has satisfied his or her burden of proof.

In Lyle, the court considered the case of Amaani Lyle, a writer’s assistant on the Friends television show. During the hiring process, Lyle’s employer told her that, in performing her job, she would be exposed to a creative workplace focused on developing scripts for an adult-oriented comedy featuring sexual themes, and that the show’s writers told sexual jokes and engaged in conversations about sex. Lyle responded that sexual jokes and discussions did not make her uncomfortable.

Indeed, while employed, Lyle was subjected to a significant amount of sexually coarse and vulgar language during the writers’ brainstorming sessions to develop dialogue for Friends. In these sessions, the writers used explicit language regarding sexual themes, shared stories of their own personal sexual experiences, and generally described women in offensive and demeaning terms. The comments were not made by men alone. Rather, everyone, regardless of gender, discussed his or her own sexual experiences and fantasies while collaborating to develop scripts for the show. In the end, many of the experiences shared became fodder for shows watched by a national television audience.

Significantly, no one on the Friends set ever directly said anything sexually offensive to Lyle, nor did anyone proposition her, ask her on a date, demand sexual favors, or physically threaten her. The only evidence Lyle produced to prove that any comments were directed at her was to say that one of the writers “looked straight at her” when he told a joke. Similarly, Lyle only could point to a few isolated comments made on one to three occasions that were about specific actresses on the set, as opposed to generalized statements about women and men made in group settings. The actresses themselves were not in attendance during the writers’ sessions and apparently had no awareness of the writers’ comments about them, namely speculation about one actress’s fertility and one writer’s belief that he missed an opportunity to have sex with one of the actresses.

Following Lyle’s termination for poor performance, she filed suit, claiming that the writers’ use of sexually coarse and vulgar language constituted sexual harassment under the FEHA. In rejecting her claims as a matter of law, the state Supreme Court clarified a number of important issues under California sexual harassment law, especially in the area of hostile work environment law:

- California courts must apply the same standards used under federal Title VII law to hostile work environment sexual harassment claims brought under the FEHA.

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• The alleged conduct must be either severe or pervasive and, separately, “because of sex.”

• The graphic nature of the verbal conduct and physical gestures is not conclusive, as “[i]t is the disparate treatment of an employee on the basis of sex—not the mere discussion of sex or use of vulgar language—that is the essence of a sexual harassment claim.”

• When a plaintiff cannot point to a loss of tangible job benefits, he or she must make a “commensurately higher showing that the sexually harassing conduct was pervasive and destructive of the working environment.”

• Like Title VII, the FEHA is “not a ‘civility code’ and [is] not designed to rid the workplace of vulgarity.”

The court specifically concluded that a hostile work environment sexual harassment claim is not established in cases where a supervisor or coworker uses vulgar or inappropriate language in front of employees, or draws sexual pictures, without directing sex-based innuendos or language toward a particular employee or toward men or women in general. Because the language examined was not specifically directed at Lyle, the court required that she establish facts from which a reasonable trier of fact could find that the conduct permeated her work environment and was pervasive and destructive. Lyle conceded that none of the offensive conduct was directed at her and that the “nondirected” conduct occurred during group sessions, in which both men and women were present and participating in the vulgar and lewd sexual conversations. Finally, because Lyle only could point to fewer than three sex-based comments made about two of the *Friends* actresses, the court found that such conduct neither permeated her work environment nor satisfied the pervasive and destructive standard.

In *Lyle*, the court not only re-examined many important tenets of hostile work environment sexual harassment cases (already firmly established under Title VII law), but also analyzed the very graphic and vulgar conduct in this case and found no violation of sexual harassment law. In doing so, the court certainly has not given free reign for coarse sex-based language in the workplace, as the decision is based carefully on the “totality of the undisputed circumstances.” The context—the set of *Friends*—is key here, for it is an environment in which the nature of the work itself required talking about sex, as the “comedy writers were paid to create scripts highlighting adult-themed sexual humor and jokes, and where members of both sexes contributed and were exposed to the creative process spawning such humor and jokes.” Few employers will fit into the *Friends* mold.

Additionally, the court emphasized that the writers did not direct the alleged offensive language and conduct toward the complaining party, but instead made the comments and simulated the lewd acts in a group setting, with both men and women present. The same allegations examined by the court in this case could well establish actionable harassment under different (and, perhaps, more common) circumstances, particularly if that language were directed toward a particular employee or group of employees of the same gender. Thus, while *Lyle* is a significant win for employers, and surely establishes that the FEHA is “not a ‘civility code’ and [is] not designed to rid the workplace of vulgarity,” the decision does not grant employers a license to allow coarse and vulgar sexual conduct by employees in the workplace without risk of facing an actionable hostile environment claim.