

Minnesota Supreme Court Affirms ‘Severe or Pervasive’ Standard of Harassing Conduct Claims

June 9, 2020

By [Andrew E. Tanick](#)



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Background

Minnesota courts evaluating hostile work environment cases under the MHRA frequently look to federal case law interpreting Title VII of the Civil Rights Act and, in particular, opinions of the Eighth Circuit Court of Appeals, for guidance. Those cases, looking to precedent from the Supreme Court of the United States, have long held that offending conduct must be severe or pervasive to be actionable. In many of the cases, the courts had held that seemingly egregious conduct did not meet the severe or pervasive standard. In light of the [#MeToo movement](#) and other societal changes, however, [employee advocates have urged the Minnesota Legislature](#) to statutorily abandon the rigorous “severe or pervasive” standard—thus far, to no avail.

In [Kenneh v. Homeward Bound, Inc.](#), those advocates joined an employee, who claimed she had been sexually harassed by a coworker, in urging the Minnesota Supreme Court to issue a decision that would have abandoned that standard. The court declined to do so, holding that the “severe or pervasive” standard remains the law, but stated that under that standard, as it has now evolved, alleged harassment

is sufficiently severe or pervasive to state a claim under the MHRA if a reasonable person, considering the totality of the circumstances, would find the conduct objectively abusive or offensive.

The Minnesota Supreme Court's Analysis

The Minnesota Supreme Court reversed a court of appeals decision that had affirmed summary judgment in favor of the defendant employer. In so doing, the Minnesota Supreme Court ruled that applying the federal courts' Title VII severe-or-pervasive framework to MHRA claims "does not mean that the conclusions drawn by those courts in any particular circumstances bind Minnesota courts in the application of [the] state statute." The Minnesota Supreme Court recognized that the MHRA is more expansive and protective than Title VII, and that the MHRA requires a different interpretation of "severe or pervasive." The court emphasized that "each case in Minnesota state court must be considered on its facts, not on a purportedly analogous federal decision."

The court also recognized that "the [severe-or-pervasive] standard must evolve to reflect changes in societal attitudes towards what is acceptable behavior in the workplace." The court specifically criticized previous decisions in which courts had held that "boorish, chauvinistic, and decidedly immature" behavior was inappropriate, but not actionable, and underscored that in today's society, "reasonable people would likely not tolerate the type of workplace behavior that courts previously brushed aside." Applying this evolved standard, the court found that based on the totality of the circumstances, including the frequency and the severity of the alleged conduct and comments, the employee in this case had presented sufficient evidence for a reasonable jury to decide the alleged behavior was sufficiently severe or pervasive to create a hostile work environment, in violation of the MHRA, thus precluding summary judgment.

Key Takeaways

Even though this case was very fact-specific, and the Minnesota Supreme Court declined to explicitly abandon the "severe or pervasive" standard, the decision clearly erodes "the high bar" prior courts had set for sexual harassment claims under the MHRA. Employers faced with internal harassment complaints, or sexual harassment lawsuits, may wish to reevaluate their strategies for responding to such issues, to keep pace with both the evolving societal expectations and the law.

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