

Sexual Harassment: Female vs. Male

Even if an employee subjectively believed he was experiencing a sexually hostile work environment, the court under Title VII must apply a reasonableness standard, examining whether the harassment is of such quality or quantity that a reasonable employee would find the conditions of employment altered for the worse.

To have a claim of constructive discharge, a former employee must show that the employer deliberately made the employee's working conditions so intolerable that the employee was forced to resign involuntarily.

A constructive discharge lawsuit cannot be based on the employee's dissatisfaction with his assignments or because his work was being unjustly criticized or because a supervisor was making work difficult or unpleasant.

The court must be able to find that a reasonable person in the employee's shoes would feel compelled to resign.

UNITED STATES DISTRICT COURT,
NEW YORK, 1999.

The U.S. District Court for the Eastern District of New York applied the same general legal principles of male vs. female sexual harassment to a male former employee's lawsuit against his former employer alleging he was sexually harassed by a female supervisor.

As is true in many women's lawsuits claiming sexual harassment by a male supervisor, the court in this case ruled the alleged harassment consisted of only isolated incidents which were not sufficiently severe to give grounds for a lawsuit.

The court ruled that since the alleged sexual harassment was not sufficiently severe or pervasive for a successful Title VII discrimination lawsuit, the male employee was not justified in claiming constructive discharge. That is, he was not forced to resign his position. He quit voluntarily.

The employee in question was a male hospital central services worker. His female supervisor bumped against him inadvertently, put her hand on his shoulder intentionally, used crude language in his presence and jokingly asked him two or three times what color underwear he was wearing.

However, according to the court, men and women often bumped against each other innocently in this department, putting a hand on a shoulder carries no overt sexual innuendo, this employee himself used foul language on the job and he was known to joke with other male and female employees about sexual subjects.

The court threw out his lawsuit. The court ruled this employee was not and could not have been offended by his supervisor's conduct to such an extent that the "workplace was permeated with sexual intimidation, ridicule and insult" which is the established legal standard for a hostile-environment sexual harassment claim. Lucas v. South Nassau Communities Hospital, 54 F. Supp. 2d 141 (E.D. N.Y., 1999).