Federal law prohibits employers from discriminating in the workplace on the basis of an individual's race, color, religion, sex or national origin. Claims for sexual harassment in the workplace are often based on a "hostile work environment," resulting from vulgar language and conduct directed at the claimant. At the same time, vulgar language is not always actionable as sexual harassment. As one court stated, "Title VII is not a civility code, and not all profane or sexual language or conduct will constitute discrimination" in the workplace.

A federal appeals court, in Reeves v. C.H. Robinson Worldwide, Inc., recently addressed the question of whether vulgar language, even if not directed specifically at the plaintiff, could be actionable as sexual harassment. The plaintiff was one of only two women working at a shipping company in Birmingham, Alabama. She claimed that her male co-workers used vulgar language on a daily basis, and did not refrain from using such language even after she complained to her co-workers and her manager. Most of the language was "general, indiscriminate vulgarity" but some was gender-specific, although none of the language was specifically directed at the plaintiff.

The Reeves court stated that sexual language and discussions that are truly indiscriminate do not establish sexual harassment and that the context of the offending words or conduct is essential to the analysis. In Reeves, while much of the vulgar language used in the plaintiff's office was general and indiscriminate, a substantial portion of the vulgar and profane words were gender-specific, such as offensive words referring to women's anatomy and promoting the idea that such gender-specific words and conduct could lead to liability for sexual harassment, even if the words were not directed specifically at the plaintiff.

Key factors in the Reeves decision, which provides useful guidance for employers, are:

1. The hostile work environment which Reeves complained of was not "gender neutral" in that plaintiff was exposed to humiliations that her male co-workers did not face, and "[b]oisterous employers" do not "get a free pass" by tolerating pervasive but indiscriminate profanity;
2. Certain types of profanity are inherently more degrading to women than to men;
3. A jury could rightfully infer the "requisite intent to discriminate" if the employee complained to the employer and "the conduct persisted unabated," even when the vulgar conduct was not specifically directed at the plaintiff.

To be sure, vulgar language and conduct in the workplace is not always actionable, depending on the context in which it occurs.

In a California case involving a lawsuit brought by a writer's assistant against the producers of the television show "Friends", the assistant sued after she was fired following four months of employment. She claimed sexual harassment, charging that the writers' use of sexually coarse and vulgar language in her presence, including frequent descriptions of their own sexual experiences and preferences, constituted sexual harassment under California law. Before being hired, the plaintiff was warned that the show dealt with sexual matters and that she would be listening to the writers' sexual jokes and discussions about sex.

The California Supreme Court held in favor of the employer, finding that most of the sexually coarse and vulgar language did not involve and was not aimed at the plaintiff or other women in the workplace, and that such language was not severe enough or sufficiently pervasive to create a hostile work environment. The court emphasized the context in which the vulgar language was used, describing the "Friends" production office as a creative workplace focused on generating scripts for an adult-oriented comedy show featuring sexual themes. According to the court, the fact that the male and female writers commonly engaged in discussions of personal sexual experiences and preferences constituted sexual harassment under California law. Before being hired, the plaintiff was warned that the show dealt with sexual matters and that she would be listening to the writers' sexual jokes and discussions about sex.

The California Supreme Court held in favor of the employer, finding that most of the sexually coarse and vulgar language did not involve and was not aimed at the plaintiff or other women in the workplace, and that such language was not severe enough or sufficiently pervasive to create a hostile work environment. The court emphasized the context in which the vulgar language was used, describing the "Friends" production office as a creative workplace focused on generating scripts for an adult-oriented comedy show featuring sexual themes. According to the court, the fact that the male and female writers commonly engaged in discussions of personal sexual experiences and preferences constituted sexual harassment under California law. Before being hired, the plaintiff was warned that the show dealt with sexual matters and that she would be listening to the writers' sexual jokes and discussions about sex.

The California Supreme Court held in favor of the employer, finding that most of the sexually coarse and vulgar language did not involve and was not aimed at the plaintiff or other women in the workplace, and that such language was not severe enough or sufficiently pervasive to create a hostile work environment. The court emphasized the context in which the vulgar language was used, describing the "Friends" production office as a creative workplace focused on generating scripts for an adult-oriented comedy show featuring sexual themes. According to the court, the fact that the male and female writers commonly engaged in discussions of personal sexual experiences and preferences constituted sexual harassment under California law. Before being hired, the plaintiff was warned that the show dealt with sexual matters and that she would be listening to the writers' sexual jokes and discussions about sex.

The lesson for employers is that, while not all vulgar conduct or profane language will necessarily result in liability, key determinants are:

1. the context in which the vulgar conduct occurs;
2. the use of gender-specific vulgarity or profanity especially offensive to one gender; and
3. the employer's response (or lack thereof) to complaints from the employee concerning the vulgar and offensive conduct.

http://www.loeb.com/vulgarlanguageworkplacesexualharassment/ 21/04/2010
When Vulgar Language in the Workplace Is Sexual Harassment - News, Articles, and ...

http://www.loeb.com/vulgarlanguageworkplacesexualharassment/