

POLICY BRIEF HF 10

WHAT

Minnesota Human Rights Act Update

- Contrary to the current definition of sexual harassment in Minnesota law, the courts adopted a strict threshold for evaluating sexual harassment cases that denies justice for victims and allows workplace sexual harassment to continue.
- The lack of workplace accountability and lack of judicial action to remedy for sexual harassment, gives victims no avenue for protection or redress, while society's attitudes and opinions about proper workplace conduct have evolved.
- Minnesota employers and employees deserve new and clear guidance to prevent sexual harassment and improve the working conditions for everyone.

AUTHOR(S)

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AT ISSUE

The Minnesota Human Rights Act (MHRA) protect Minnesota's employees from workplace sexual harassment which is defined as:

363A.03 Subd. 43. Sexual harassment.

"Sexual harassment" includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature when:

(1) submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, education, or housing;

(2) submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing; or

(3) that conduct or communication has the purpose or effect of substantially interfering with an individual's employment...ⁱ, **or** creating an intimidating, hostile, or offensive employment, public accommodations, public services, educational, or housing environment.

Courts have created a **barrier** to employer action and employee relief in that "an intimidating, hostile or offensive environment" must be '**severe or pervasive**' **before** an employer is required to act to protect the employee from harassment.

Reporting harassment has its own risks, and a victim who reports early instances of harassment before it meets the "high threshold," may be legally ignored, giving the victim no relief and leaving her open to more harassment and retaliation. Meritorious cases are dismissed without ever going to a jury trial; wrongdoers keep harassing and barriers to equal opportunity in the workplace remain intact.

Minnesota Courts have recognized the need for the legislature to act:

	<p>“It is not a leap to say that gone are the days when men can use the workplace to further their prurient interests,” he added. “Unwanted sexual advances, belittling sexual banter, touching, and mocking sexual language are no longer viewed as merely boorish, obnoxious, chauvinistic, or immature—they should be actionable.”</p> <p>Judge Mel Dickstein</p> <p>“The line of cases addressing claims asserted by plaintiff is clear. Although each case is unique...the standard is high. The defendant should take no solace in prevailing on summary judgement in this case, nor interpret this decision as condoning management’s disinterest in taking simple, reasonable steps to deal with the troubling customers. The plaintiff deserved better from her employer.</p> <p>Arbitrator - Judge Mary Pawlenty (retired)</p>
<p>SCOPE OF THE PROBLEM</p>	<ul style="list-style-type: none"> • In 2017, the U.S. Equal Employment Opportunities Commission (EEOC) received 26,978 claims of workplace harassment. ⁱⁱ • Of those a little more than half (12,428) were about sex-based harassment and a quarter (6,696 specifically about sexual harassment (US EEOC 2018) • In 2018 there 691 cases filed with the Minnesota Department of Human rights, 42 (6%) were employment sexual harassment cases.ⁱⁱⁱ • From the Minnesota House of Representatives survey of members and staff: 19.7% of members and 20.4% of employees stated that they had experienced or witnessed something that could be described as sexually harassing behavior in the legislative workplace.
<p>KEY TALKING POINTS</p>	<ul style="list-style-type: none"> • The court adopted threshold of ‘severe or pervasive’ is a disincentive to change workplace behavior. HF 10 will empower employers by giving them a clearer and more intuitive framework for preventing sexual harassment and holding harassers accountable • The MN House of Representatives changed their internal personnel policies to say that sexual harassment need not be severe or pervasive. If it is good enough for the MN House of Representatives, it is good enough for all employers in Minnesota. • House file 10 will empower employers to remove the hazard of sexual harassment from the workplace. • The courts have recognized the need for the legislature to act as workplace standards of conduct have evolved and the current case law has tied judicial hands. • House file 10 provides a much-needed clarification to ensure that modern standards of workplace behavior are adopted in workplaces across the state. • House file 10 restores the intent of the Minnesota Human Rights Act and removes a roadblock to justice.

ⁱ The statute also applies to public accommodations or public services, education or housing.

ⁱⁱ <https://www.eeoc.gov>

ⁱⁱⁱ Provided by the Minnesota Department of Human Rights.