

Seventh Circuit Finds Menial Tasks, Isolation, And Allegations Of Violence Provide Pipeline To Jury Trial

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In reversing a district court's grant of summary judgment on an employee's hostile work environment claim under Title VII, the Court of Appeals for the Seventh Circuit found a female plumber to have alleged sufficient facts to make it to a jury trial. Specifically, in *Hall v. City of Chicago*, the only female plumber working within a particular division for the City of Chicago, alleged, among other things, that she was forced to do menial tasks (e.g., sorting of the exact same documents over and over again, reviewing the same videos time and again and taking notes which purportedly were never used, etc.), was isolated by her supervisor's instructions that others within her division were not to speak with her, and was subjected to violence (e.g., being forcibly "bumped" in the hallway and being the brunt of comments suggesting her supervisor should engage in physical violence towards her) due to her sex.

After initially discussing that the individual acts alleged by the employee did not independently rise to the level of severe or pervasive harassment, the Seventh Circuit reiterated the notion that harassment should not be "carve[d] up" incident-by-incident, and instead must be examined under the totality of the circumstances approach. With this directive in mind, the Seventh Circuit found that a jury could conclude that the employer's conduct was intended to ostracize the employee from everyone else in her division and that even minor incidents that "consistently or systematically burden women throughout their employment are sufficiently pervasive to make out a hostile work environment claim." The inquiry as to whether her supervisor's hostility stemmed from the employee's sex was a closer call for the Court, ultimately turning on the substance of some of the supervisor's alleged aggressive comments (e.g., he "ought to slap that woman" and "I could slap that woman and get a promotion"), which specifically incorporated reference to the plaintiff's sex and implicated conduct (slapping) ordinarily not associated with conduct one male engages in towards another male. To top this off, the supervisor's rationale for some of his decisions was discredited by union testimony and allowed for the Court to find the existence of a factual dispute. Further, the Court found a jury could hold the City of Chicago liable for the supervisor's alleged harassment, as the plaintiff alleged a tardy response to her complaints and the City could not point to a codified sexual harassment policy that plaintiff failed to utilize.

This case contains significant discussion of the fact-specific and context-specific nature of the inquiry as to whether alleged animus can be tied to an employee's protected characteristic(s). Accordingly, it serves as an important reminder to employers that comments that may at first blush appear innocuous or general in nature could be found to bolster a claim of unlawful

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animus depending on the other conduct or commentary of the alleged bad actor, all of which the Court will take into consideration.

