

Severe AND Pervasive?

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The Fifth Circuit Court of Appeals recently overturned a Texas District Court after it appeared to apply the wrong legal standard in a sexual harassment lawsuit. In *Royal v. CCC&R*, Tonia Royal was fired after complaining to her supervisor that two maintenance workers regularly visited her office and, among other things, sniffed her in a suggestive manner. Following her termination, Royal initiated a lawsuit alleging she was subjected to unlawful sexual harassment.

In order to demonstrate actionable sexual harassment, Royal was required to demonstrate that the conduct complained of was either severe (e.g. sexual assault) *or* pervasive (repetitive conduct over a period of time). In reversing the lower Court's decision to dismiss the case, the Fifth Circuit noted that the Judge seemed to apply the wrong standard. Specifically, the Judge suggested in his opinion that the conduct did not rise to the level of actionable sexual harassment because it was not *both* severe *and* pervasive. However, even minor instances of sexual misconduct can, over time, constitute actionable harassment.

This case reminds us of the importance of addressing even seemingly minor complaints regarding questionable employee conduct. What might seem like "no big deal" in isolation, may constitute actionable harassment if it continues to occur over a period of time.

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