

such conduct. In 2005 the Supreme Court in *Clarke County School District v. Breeden* summarized when offensive sexual conduct becomes illegal:

[S]exual harassment is actionable under Title VII only if it is so severe or pervasive as to alter the conditions of the victim's employment and create an abusive working environment.

The Court continued:

Workplace conduct is not measured in isolation; instead, whether an environment is sufficiently hostile or abusive must be judged by looking at all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.

16.4% of all sexual harassment claims—or 2,094 claims—were filed by men in 2009.

It is not uncommon for a discrimination lawsuit to involve multiple kinds of claims. A good example of this is a recent case against Cracker Barrel, in which the restaurant agreed to pay \$2 million to settle a lawsuit alleging sexual harassment, racial harassment, and retaliation by 51 current or former employees. On behalf of the workers, the EEOC alleged that male co-workers and managers subjected female workers to unwelcome and offensive sexual comments and touching. According to the EEOC, "Black employees said that they experienced racially charged language in the workplace, including 'spear chucking porch monkey,' 'you people,' and the 'n-word.'" In addition to the monetary settlement, Cracker Barrel must train all employees in its stores about harassment.

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Vulgar Workplace Language & Sexual Harassment

Can vulgar language, even if it is not specifically directed at an individual, be actionable as sexual harassment under Title VII? Yes—according to the 11th Circuit Court of Appeals. The plaintiff, Ingrid Reeves, worked at a sales company, C.H. Robinson. Reeves alleged that she was subjected to hearing her male co-workers call other women names such as "b***h," "wh**e" and "c**t" on a daily basis. She also claimed that there were repeated vulgar discussions about female body parts and a pornographic image of a woman in the office. Reeves complained to her co-workers, her supervisor, and top company executives, but the offensive conduct was "accepted and tolerated."

According to the 11th Circuit, "if Reeves's account is to be believed, C.H. Robinson's workplace was more than a rough environment—indiscriminately vulgar, profane, and sexual. Instead, a just reasonably could find that it was a workplace that exposed Reeves to disadvantageous terms or conditions of employment to which members of the other sex were not exposed." Moreover, the court stated that it was no defense to assert "that the workplace may have been vulgar and sexually degrading before Reeves arrived."

For more information, see, *Reeves v. C.H. Robinson Worldwide, Inc.*, 07-10270 (11th Cir. Jan. 20, 2010), available at www.ca11.uscourts.gov/opinions/ops/200710270op2.pdf.

Employer's Defense to Hostile Environment Is an employer always liable when fellow employees create a hostile environment based on gender? The answer is that the employer is not always legally responsible for a hostile environment. The employer may have a defense. Courts have ruled that an employer is liable to a plaintiff employee for a hostile working environment created by fellow employees only when the employer knows of the problem and fails to take prompt and reasonable steps to correct it, such as by moving the harassers away from the plaintiff employee. The employer can defend