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In a closely watched case involving the line to be drawn between creative freedom and harassment, the California Supreme Court unanimously holds that vulgar and sexual language by itself does not constitute sexual harassment under California law.

California Edition

A Littler Mendelson California-specific Newsletter

California Supreme Court Approves Raunchy Talk as Part of the "Creative Workplace" Environment

By Michael Brewer and Nancy E. Pritikin

Talking dirty can sometimes be a necessary part of the job, the California Supreme Court in *Lyle v. Warner Brothers Television Prods.*, No. S125171 (April 20, 2006), unanimously ruled when it threw out sexual harassment claims made by a former writers' assistant on the NBC television show "Friends." The court sided with Warner Brothers and reversed a lower court ruling that would have allowed the case to proceed to trial.

Factual Background

The lawsuit was brought by Amaani Lyle, a former writers' assistant for the "Friends" television show. During her job interview she was forewarned that the show dealt with sexual matters and that as a writers' assistant, she would be listening to sexual jokes and dialogue. Lyle responded that the discussions about sex and jokes did not make her feel uncomfortable, and she was hired as a writers' assistant.

Warner Bros. claimed it fired Lyle four months after it hired her because she was not able to type fast enough to keep up with the speed of the discussion at the writers' meetings. Lyle claimed that she was subjected to sexual and racial harassment through offensive comments and jokes made by the executive producers and writers during writers' meetings. According to Lyle, the writers discussed their own sexual preferences and experiences, told dirty jokes, drew lewd pictures, talked about women's breasts and simulated masturbation. She admitted, however, that she did not recall any employee on the "Friends" show ever saying anything sexually offensive about her directly to her, nor was she sexually propositioned.

The trial court granted summary judgment dismissing Lyle's case entirely, and awarded the defendants $415,800 in attorneys' fees on the grounds that Lyle's claims were frivolous, unreasonable, and without foundation. The court of appeal affirmed the judgment in part and reversed it in part. In its decision, the California Supreme Court confined its opinion to the following issue:

Can the use of sexually coarse and vulgar language in the workplace constitute harassment based on sex within the meaning of California's Fair Employment and Housing Act?

The California Supreme Court held that vulgarity can be a necessary part of a creative workplace environment, noting that the sexually coarse and vulgar language at issue did not involve and was not aimed at plaintiff or women in general.

In reaching its conclusion, the California Supreme Court did not suggest that the use of sexually coarse and vulgar language at work could never constitute sexual harassment because of sex, nor did it imply that employees generally should be free to engage in sexually coarse and vulgar language or conduct at work. Nonetheless, the court recognized that California's harassment statute is not a "civility code" and "is not designed to rid the workplace of vulgarity."

Creative Necessity Defense

The defendants in *Lyle* argued that creative necessity justified their conduct. In other words, in the context of a workplace where comedy writers were paid to create scripts highlighting adult-themed sexual humor and jokes, the writers' sexual antics and sexual

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talk did not contribute to an environment where women and men were treated differently. Thus, the court emphasized the importance of context of the particular workplace in determining whether accused harassers said or did things because of the plaintiff's sex. The court characterized the "Friends" setting as a "creative workplace focused on generating scripts for an adult-oriented comedy show featuring sexual themes."

What the Lyle Case Means for Employers

Lyle highlights the relevance of context in evaluating sexual harassment claims. The California Supreme Court emphasized that whether a work environment is sexually hostile can be determined only by looking at all of the circumstances, including the frequency, severity, and whether it unreasonably interferes with an employee's work performance. Thus, some employers may have more protection against harassment claims than others simply based on the type of work that is done. The "Friends" writers argued that their sex talk and antics were just part of the job.

The Supreme Court's decision in *Lyle* means that employers in television and other creative industries may be relieved to know that the creative workplace is alive and well. The *Lyle* case undoubtedly will affect sexual harassment litigation in the future as employers and the courts define the context in which words and conduct create a "hostile work environment" or merely reflect the "creative workplace."

In light of *Lyle's* recognition that vulgarity in the workplace may be acceptable in certain contexts, employers in creative workplaces should consider revising job descriptions to cover the nature and scope of the work environment. Notices to employees about possible exposure to offensive behavior may be appropriate depending on the workplace.

Michael E. Brewer is a shareholder in Littler Mendelson's Walnut Creek office. Nancy E. Pritikin is a shareholder in Littler Mendelson's San Francisco office. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, Mr. Brewer at mbrewer@littler.com, or Ms. Pritikin at nepritikin@littler.com.

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