Is It Sexual Harassment If It Only Happened Once?

April 11, 2018 • Legal Updates & Insights

With the #MeToo movement gaining tremendous awareness, momentum and support, it is important for employees to know that even a single incident of sexual harassment may be enough for an employee to sustain a legal claim against an employer or harasser.

Under federal law, in order to sustain a claim for sexual harassment based on a hostile work environment, the victim has to allege that his or her workplace is permeated with discriminatory intimidation, ridicule and insult in a way that is sufficiently "severe or pervasive" to alter the conditions of the victim's employment and create an abusive working environment. Employers often argue that this standard is not satisfied by a single act of sexual harassment. However, if the single incident of harassment is sufficiently severe, a plaintiff will still be able to maintain a claim.

Moreover, and importantly, this "severe or pervasive" standard DOES NOT apply under the New York City Human Rights Law ("NYCHRL") – the anti-discrimination and harassment law that applies to New York City employers. Under NYCHRL, unlawful sexual harassment may be found if there has been ANY sexual harassment or mistreatment on account of an employee's gender.

However, even under the federal law standard, courts have universally accepted that any kind of criminal sexual assault may be sufficient to maintain a legal claim for sexual harassment. *See* e.g. *Richardson v. N.Y. State Dep't of Corr. Serv.*, 180 F.3d 426, 437 (2d Cir. 1999) (observing that a single sexual assault may be sufficient to alter the terms and conditions of the victim's employment); *Petrosino v. Bell Atlantic*, 385 F.3d 210, 224 (2d Cir. 2004) (a single instance of sexual assault has been deemed sufficiently severe).

That is not at all to say criminal misconduct is necessary – sexual harassment that is not criminal, even if it involves one incident, may still be sufficiently severe even in less egregious situations. For instance, in *Perry v. Slensby*, No. 16 Civ. 08947 (S.D.N.Y. Feb. 28, 2018), the court found that the single act of the plaintiff's supervisor making lewd comments to the plaintiff about sexual acts he would perform on the plaintiff while massaging the plaintiff's shoulder was a sustainable sexual harassment claim.

Moreover, in *Pryor v. Jaffe & Asher, LLP*, 992 F. Supp. 2d 252 (S.D.N.Y. 2014), the plaintiff met her supervisor at a bar after work, where her supervisor rubbed her hand in a sexually suggestive fashion, and when the plaintiff attempted to leave, her supervisor pulled her in for an unwelcomed embrace and kiss. The court concluded that the plaintiff's allegations about this single incident were sufficient to sustain a claim, and the case eventually settled for an undisclosed amount.

As stated above, the NYCHRL standard is even broader than federal law. As such, employees should take notice that a single incident may be enough to maintain a claim for sexual harassment, and that is even more likely to be the case for New York City employees. If you are experiencing sexual harassment or other inappropriate conduct or treatment at work, call (212) 257-6800 to speak to an attorney who can

advise you of your legal rights and answer any questions you may have.

James C. Underwood
Associate
WIGDOR LLP
85 Fifth Avenue, New York, NY 10003
T: (212) 257-6800 | F: (212) 257-6845
junderwood@wigdorlaw.com
wigdorlaw.com