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CALIFORNIA SUPREME COURT ISSUES RULING IN *FRIENDS* SEXUAL HARASSMENT CASE

On April 20, 2006, the California Supreme Court issued a long-awaited decision in the *Friends* sexual harassment case (*Lyle v. Warner Bros. Television Productions, et al.*). In contrast to several previous opinions in unlawful harassment cases, the Supreme Court moved a step closer to the federal standard for determining when workplace conduct constitutes unlawful hostile environment sexual harassment. In *Lyle*, the Supreme Court unanimously held that summary judgment should be granted in favor of Warner Bros. and that Lyle's hostile environment harassment claim should be dismissed.

In the decision, the Supreme Court cited with approval the United States Supreme Court's 1998 decision in *Oncale v. Sundowner Offshore Services Inc.* In *Oncale*, the U.S. Supreme Court held that the antiharassment law was never intended to be used to mandate a "civility code" for the workplace or to outlaw all forms of sexual comments and vulgar language. Rather, the *Oncale* Court held that actionable sexual harassment must be harassment because of the "victim's" sex. In addition, the conduct must be "severe or pervasive" enough to adversely affect the "victim's" work environment.

In *Lyle*, the plaintiff was a former writers' assistant who worked on the *Friends* sitcom for only four (4) months before she was terminated for poor performance. Lyle sued Warner Bros. and several of the show's writers claiming that the atmosphere in the writers' room was replete with sexual antics, sexual banter, sexual innuendo and vulgarity. Lyle claimed that such conduct constituted unlawful sexual harassment under California's Fair Employment and Housing Act ("FEHA").

Specifically, Lyle alleged that the writers regularly used vulgar and sexually explicit language, discussed their sexual experiences and preferences, engaged in sexually suggestive behavior (pretending to engage in sex acts and masturbate), and discussed the sex lives of the show's actors.

While the defendants claimed that most of plaintiff's allegations were a "total fabrication," they admitted that the writers did engage in candid discussions about sex and adult-themed humor as a means of developing scripts for the *Friends* comedy. The Supreme Court acknowledged that most of the sexual and vulgar language and conduct at issue in the case did not involve plaintiff and it was not aimed at her or other women who worked at Warner Bros.

Therefore, the Court found that such "nondirected" conduct was not harassment because of plaintiff's sex; in fact, both the male and the female writers engaged in sexual discussions. In addition, the Court held that such conduct would be considered (by a "reasonable person in the plaintiff's position") to be less offensive to the plaintiff. Therefore, the conduct in question did not meet the "severe" standard required to prevail in a sexual harassment claim.

The *Lyle* Court indicated that one of the key factors in rejecting plaintiff's harassment claim was the fact that the nature of the work environment required that the writers be allowed to exercise their creative expression so that they could develop successful scripts for the adult-oriented TV show. The Court also made a point of acknowledging that the plaintiff had been advised during her job interview that she would be exposed to sexual discussions.

The Court concluded that "[w]hile the FEHA prohibits harassing conduct that creates a work environment that is hostile or abusive on the basis of sex, it does not outlaw sexually coarse and vulgar language or conduct that merely offends."

However, the Court was quick to point out that the use of sexually explicit and vulgar language in the workplace can, indeed, constitute unlawful sexual harassment when the totality of the circumstances demonstrate that the inappropriate conduct is aimed at a particular person or group of people in the workplace. In addition, the Court stated that sexually explicit and vulgar language aimed at women in general could be used as persuasive indicators of the existence of sex discrimination in the workplace.

Impact: Although the California Supreme Court held that there are some limits on what types of conduct constitute unlawful sexual harassment in the workplace, employers are cautioned against allowing employees to engage in sexual conversations, sexual antics, sexual banter and/or vulgar language in the workplace.

The *Lyle* Court emphasized that its decision was driven primarily by the nature of the work involved in developing successful scripts for the *Friends* show namely, that the writers are given substantial creative latitude during the script writing process. It is unlikely that the "creative necessity" defense to a sexual harassment claim articulated by the Supreme Court will have widespread application to other industries. Thus, such a defense is narrowly drawn.

To avoid problems and costly litigation, employers must continue to maintain a strict policy against all forms of unlawful harassment, especially sexual harassment. Employers must also remain vigilant in the enforcement of an antiharassment policy. In addition, it is important that employers conduct regular antiharassment training for all employees. This is especially true for supervisory employees in view of California's mandatory harassment training law applicable to employers with 50 or more employees.

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If you have any questions about the *Lyle* decision or about antiharassment training, please contact either **Alyce A. Rubinfeld** at 310.557.9509, **arubinfeld@ebglaw.com**, or **Betsy Johnson** at 310.556.8861, **ejohnson@ebglaw.com** in our Los Angeles office or **Steven R. Blackburn** at 415.398.3500, **sblackburn@ebglaw.com** in our **San Francisco office**.