

NUMBER 79

APRIL 24, 2018

## Sexual Harassment

### Minnesota Could Make Harassment Easier to Show

Victims of sexual harassment could have an easier time making their legal claims in Minnesota courts under potential first-in-the-nation legislation gaining momentum in the state legislature.

Minnesota would become the first state to reject the “severe or pervasive” legal standard if the state approves House File 4459.

Under federal law and U.S. Supreme Court precedent, workers alleging on-the-job harassment must prove that the conduct was particularly offensive enough or occurred frequently enough to create a hostile workplace. The state proposal specifies that such a showing isn’t required.

The bill would essentially relieve employees of the legal threshold established by the Supreme Court in *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986), Republican Majority Leader Joyce Peppin told Bloomberg Law April 23. Peppin is chair of the House Subcommittee on Workplace Safety and Respect.

In *Meritor Savings*, the high court unanimously recognized sexual harassment as a violation of Title VII of the 1964 Civil Rights Act and helped define the legal foundations for sexual harassment claims in the workplace. But the 32-year-old decision specifies that victims must demonstrate that the harassing conduct is sufficiently severe or pervasive to affect the conditions of employment and create a hostile work environment. Employers frequently cite the standard when seeking to dismiss actions in motions for summary judgment.

“This bill would make Minnesota a nationwide leader in combating sexual harassment, and is a first step toward one day overturning this Supreme Court precedent,” Peppin said. “For too long, victims haven’t been able to have their day in court as a result of this incredibly high bar for sexual harassment cases.”

The bill would become effective Aug. 1 but would bar any retroactive application of the new legal standard.

**Meeting With Gov. Dayton** Peppin said H.F. 4459 has attracted 34 co-sponsors from both parties in the House and she predicted quick action in the 134-member chamber. Peppin also said she expects full support from Gov. Mark Dayton (DFL) and noted she has scheduled a meeting with him to discuss the legislation.

The legislative proposal emerged in response to hearings by Peppin’s committee that examined a sexual har-

rassment scandal tarring the Minnesota Capitol. The scandal forced two lawmakers to resign last fall and caused the legislature to adopt new training, reporting, and investigative protocols aimed at deterring and managing incidents of harassment.

Jonathan Griffin, an employment policy analyst at the National Conference of State Legislatures, said Minnesota would be unique if it bypassed the severe-or-pervasive standard.

“No state law currently has a different standard,” Griffin said in an email. “California has looked into this standard, but to my knowledge, no bill has been introduced,” he said. He noted that under the New York City Human Rights Law, a potential victim of sexual harassment need only demonstrate that she is treated “less well” than other employees.

A spokesman for the Minnesota Chamber of Commerce said the business group is still studying the proposal. The group has opposed legislation imposing additional burdens on employers in the past. Last fall the chamber unsuccessfully challenged the Minneapolis \$15 minimum wage ordinance in court.

**Employers’ Advantage** Employment attorney Sheila Engelmeier, who testified before Peppin’s committee, recently penned a legal review of the severe-or-pervasive standard in the context of Minnesota court decisions and concluded that employers and alleged harassers hold a significant advantage over plaintiffs.

Engelmeier, a partner with Engelmeier & Umanah PA., concluded that the current posture of Minnesota courts conflicts with state policies seeking to ensure civil rights in the workplace and harassment-free work environments.

“Sexual harassment law appears to have swung way too far, trending toward requiring an incredibly high standard to prove that statements and conduct are severe or pervasive enough to warrant actionable harassment. This is contrary to Minnesota’s public policy,” Engelmeier wrote in the article.

The legal climate has only gotten worse in recent months, and judges have complained about the inequities in recent rulings, she said.

“There have been at least three cases since December where judges are saying this is almost an impossibly high bar to meet,” Engelmeier told Bloomberg Law.

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