

## **Employee Stated Viable Title VII Claim Of Same-Sex Hostile Environment Sexual Harassment**

Medina Rene worked for the MGM Grand Hotel, located in Las Vegas, Nevada, from December 1993 until his termination in June 1996. He worked as a butler on the 29th floor, where his duties involved responding to the requests of the wealthy, high-profile and famous guests for whom that floor was reserved. All of the other butlers on the floor, as well as their supervisor, were also male.

Over the course of a two-year period, Rene's supervisor and several of his fellow butlers subjected him to a hostile work environment on almost a daily basis. The harassers' conduct included whistling and blowing kisses at Rene, calling him "sweetheart" and "muñeca" (Spanish for "doll"), telling crude jokes and giving sexually oriented "joke" gifts, and forcing Rene to look at pictures of naked men having sex. On more times than Rene said he could possibly count, the harassment involved offensive physical conduct of a sexual nature. He was caressed and hugged and his coworkers would "touch [his] body like they would to a woman." On numerous occasions, he said, they grabbed him in the crotch and poked their fingers in his anus through his clothing. Rene believed the harassing behavior occurred because he is gay.

Rene filed suit alleging that he had been unlawfully sexually harassed in violation of Title VII. MGM Grand moved for summary judgment on the grounds that claims of discrimination based on sexual orientation are not cognizable under Title VII.

The district court agreed that Rene had failed to state a cognizable Title VII claim. In granting summary judgment in favor of MGM Grand, it concluded, "Title VII's prohibition of 'sex' discrimination applies only to discrimination on the basis of gender and is not extended to include discrimination based on sexual preference." Rene appealed. The 9th Circuit affirmed. On rehearing en banc, the Court reversed, holding that Rene's allegations stated a claim for sexual harassment, even though Rene also alleged that the harassment was motivated by hostility based on his sexual orientation:

This case presents the question of whether an employee who alleges that he was subjected to severe, pervasive, and unwelcome "physical conduct of a sexual nature" in the workplace asserts a viable claim of discrimination based on sex under Title VII of the 1964 Civil Rights Act, even if that employee also alleges that the motivation for that discrimination was his sexual orientation. We would hold that an employee's sexual orientation is irrelevant for purposes of Title VII. It neither provides nor precludes a cause of action for sexual harassment. That the harasser is, or may be, motivated by hostility based on sexual orientation is similarly irrelevant, and neither provides nor precludes a cause of action. It is enough that the harasser have engaged in severe or pervasive unwelcome physical conduct of a sexual nature. We therefore would hold that the plaintiff in this case has stated a cause of action under Title VII.

*Rene v. MGM Grand Hotel*

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