

# Client Alert

A report  
for clients  
and friends  
of the firm     April 2006

## *That's What "Friends" Are For...* California Supreme Court Clarifies Workplace Harassment Rules

In a far-reaching opinion with important implications for all employers, the California Supreme Court concluded that sexually coarse and vulgar language, standing alone, did not create a hostile work environment for a writers' assistant who worked on the television show "Friends." In short, the Supreme Court recognized that the law against sexual harassment "is not a 'civility code' and is not designed to rid the workplace of vulgarity." *Lyle v. Warner Bros. Television Prods.*, 2006 WL 1028558 (Cal. S. Ct. Apr. 20, 2006).

The California Supreme Court ordered that summary judgment be reinstated in favor of Warner Brothers and the other defendants after determining there was insufficient evidence the "sexually coarse and vulgar language" (whose existence defendants in part admitted) was specifically directed at the plaintiff or that it was so severe or pervasive as to alter the conditions of her employment.

Plaintiff Amaani Lyle's employment was terminated after four months on the job because of problems she was having typing and transcribing the writers' jokes. Before she was hired, Lyle was forewarned that, as an assistant to the comedy writers, she would be listening to their sexual jokes and discussions about sex and she would be transcribing those jokes for possible use as dialogue for the show – a show that revolved around a group of young, sexually active adults that often featured sexual and

anatomical language, innuendo, wordplay and physical gestures to convey sexual acts and humor.

Lyle asserted that during her four months of employment with the show she was exposed to frequent conversations among the writers about their personal sex lives, their sexual preferences and predilections, their fantasies about female members of the cast, as well as sexually explicit doodling and cartoons on scripts, calendars and other pieces of paper. Importantly, however, Lyle admitted that no one on the production ever said anything sexually offensive about *her*, and no one ever asked her out on a date or sexually propositioned her, demanded sexual favors of her or physically threatened her in any way.

### **There Was No Harassment "Because of Sex."**

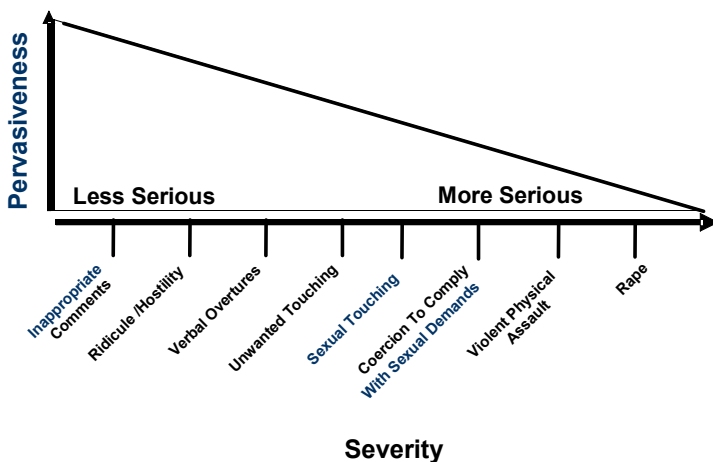
Although there were plenty of "sexual antics," including explicit sexual drawings, comments, graphic descriptions of personal sexual preferences, pantomiming of masturbation, and bragging about sexual exploits, none of it was specifically aimed at Lyle herself or other women in the workplace. In fact, the challenged conduct occurred during group sessions with both male and female participants present, and the show's female writers also discussed their own sexual experiences during brainstorming sessions. The Court recognized that because this was a "creative workplace focused on generating scripts for an adult-oriented comedy show featuring sexual themes," it was even less likely the writers' motivation was to harass Lyle or other female employees.

### **Defendants' Conduct Was Not Sufficiently Severe or Pervasive to Alter Conditions of Employment.**

Further, the Supreme Court observed that the prohibition against sexual harassment "requires neither asexuality nor androgyny in the workplace; it forbids only behavior so objectively offensive as to alter the 'conditions' of the victim's employment." To satisfy this element, the plaintiff must show a "concerted pattern of harassment of a repeated,

routine, or a generalized nature,” and it must be something more than occasional, isolated, sporadic or trivial activity. Additionally, to be actionable, the conduct must be offensive both objectively (to the reasonable person) and subjectively (to the plaintiff).

This chart reflects the relationship between “severity” (on the horizontal axis) and “pervasiveness” (on the vertical axis) — the more severe the behavior, the less pervasive it need be (and vice versa) in order to trigger potential liability:



The Court recognized that a plaintiff may be a “victim” of sexually harassing conduct even it is not directed at him or her – however, such a plaintiff would have an “even higher showing” if he or she were not personally subjected to offensive remarks and actions. Although *Lyle* testified in her deposition that the writers’ vulgar discussions and conduct “wasted her time,” there was no evidence the conduct disparately affected her work hours or duties when compared to those of her male counterparts.

#### Practical Effects?

The *Lyle* case will have a profound effect on employment law in California and possibly throughout the nation. Before *Lyle*, sexually explicit (or even just off-color) language, innuendo or visual depictions in the workplace might have given rise to an actionable claim without regard to context or effect. Such statements and objects were best considered by an employer to be “radioactive” material, potentially infecting any unsuspecting employee who happened to encounter it. Employers faced strict and serious potential liability whenever a supervisor told an inappropriate joke or downloaded a sexually explicit photograph from the Internet.

From now on, aggrieved employees in California will have to show they were harassed “because of sex” and that the

sexual activity was so severe or pervasive as to alter the conditions of their employment. As the holding in *Lyle* demonstrates, these are not easy tests for an employee to meet. And, because *Lyle* was decided in the context of a summary judgment motion, every employer should have renewed hope that similar and weaker claims will never make it to trial.

However, *Lyle* is not a signal to employers to let their guard down or to become more complacent by failing to adopt or enforce anti-harassment and anti-discrimination policies. Savvy post-*Lyle* plaintiffs will assert that sexually explicit comments and material in the workplace *were* aimed at them in particular and/or their gender.

Employers can avoid or diminish such claims by adopting and following anti-harassment policies and by conducting appropriate training of employees, including the training of supervisors mandated by California Government Code section 12950.1. Investigate instances of alleged sexual harassment and deal swiftly and effectively with those who violate the policies.

Although *Lyle* assuredly delivers a whole new set of arrows to the quiver of a lawyer defending against a sexual harassment claim, still the best way to win such a case is for it never to have been filed in the first place.

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