

The Times They Are A Changin': Minnesota Bill Would Remove "Severe or Pervasive" Sexual Harassment Standard

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Bruce J. Douglas

Minneapolis

Author

After suffering two embarrassing departures of its members in the wake of sexual harassment complaints by staffers and female members, the Minnesota Legislature is considering amending the state's discrimination statute to state that a plaintiff need not prove that the sexual harassment was "severe or pervasive." To quote a well-known Minnesotan, Bob Dylan, "The Times They Are A Changin'."

In 1986, the Supreme Court of the United States held in *Meritor Savings Bank v. Vinson* that sexual harassment could be a form of sex discrimination under Title VII of the Civil Rights Act of 1964 if (1) the harassment involves the conditioning of employment benefits on sexual favors, or (2) the harassment, while not affecting economic benefits, creates a hostile or offensive working environment. Employers could be held liable for the actions of their supervisors if the employers knew of the bad behavior.

Since *Vinson*, federal courts have wrestled with numerous fact situations in an effort to define what is "severe or pervasive," often leading to results that some legislators now find questionable or even shocking. Minnesota state courts have adopted the *Vinson* standard, and recently a district court judge in Hennepin County railed against it, complaining that it tied his hands in holding employers accountable. "Times change, and with them so too do the standards of conduct," Judge Mel Dickstein wrote in a recent opinion in which he dismissed a plaintiff's claims. He continued, "There has been a sea-change in cultural attitudes toward sexual harassment . . . It is not a leap to say that gone are the days when men can use the workplace to further their prurient interests. Unwanted sexual advances, belittling sexual banter, touching, and mocking sexual language are no longer viewed as merely boorish, obnoxious, chauvinistic, or immature—they should be actionable."

The Minnesota bill, [HF 4459](#), would address Judge Dickstein's complaints by stating that sexual harassment does not need to be "severe or pervasive" to be actionable under the state's sexual harassment law. This revision to the Minnesota Human Rights Act is strongly supported by the commissioner of the Minnesota Department of Human Rights and the plaintiff's bar. It has bipartisan support. The Minnesota Chamber of Commerce opposes the bill. A legislative committee is holding hearings on the bill. The legislature will adjourn on May 21, 2018.