

## **Gender-Based Harassment Need Not Be Sexual To Be Illegal**

**By Karen Sutherland**

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The Washington Court of Appeals has held that a manager's angry outbursts towards women could qualify as illegal harassment, even though the outbursts were not sexual in nature. The plaintiff claimed that her supervisor would get red in the face, pace back and forth and use a tone of voice that was demeaning and degrading when dealing with most women in the office. The court held that, under the right circumstances, this kind of conduct could constitute sexual harassment, even though the behavior was not sexual in nature. To be illegal, the harassment must (1) be unwelcome; (2) occur because of sex; (3) affect the terms or conditions of employment; and (4) be imputed to the employer. In addition, gender must be the "motivating factor" for unlawful discrimination. In this particular case, the plaintiff failed to show that the conduct complained of occurred "because of sex." The court noted that she failed to present testimony from other employees which would tend to show that the conduct was abusive because of sex, and the plaintiff admitted that her supervisor had angry outbursts towards some male employees, too. Additionally, the plaintiff did not establish that the conduct was sufficiently severe and persistent to constitute "the terms or conditions of employment."

**Conclusion:** Previous cases held that behavior had to be overtly sexual in nature to violate the state sex discrimination statute. This case expands the employer's liability to cover abusive behavior that is directed towards an employee because of gender. The best defense would be to avoid angry outbursts towards employees in general. Managers and supervisors who are prone to angry outbursts should be aware that severe, persistent expressions of anger towards one gender may result in liability. Proving that a supervisor is an "equal opportunity abuser" is not a very appealing prospect. *Payne v. Children's Home Society*, 77 Wn. App. 507 (1995).

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