



HF 10 (MOLLER)

# PROTECTING MINNESOTANS FROM SEXUAL HARASSMENT

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**All Minnesotans deserve to work and live in an environment free from sexual harassment. It's clear we need to change the current legal standard of "severe or pervasive." That's why House DFLers are working to change the standard for sexual harassment.**

## OVERVIEW

According to a 2016 report by the Equal Employment Opportunity Commission, 85 percent of women report that they have been sexually harassed in the workplace.

Under current law, the Minnesota Human Rights Act ("MHRA"), there exists three elements that must be satisfied to prove sexual harassment in the workplace. The MHRA does not include "severe or pervasive" language, which has arisen from Minnesota courts adopting language from cases analyzing federal anti-discrimination law. Application of this standard has resulted in myriad cases throughout MN where egregious conduct does not constitute sexual harassment. In one of those cases, a judge stated that, "our courts need to revisit the issue of what facts constitute those 'sufficiently severe or pervasive acts' to alter the condition of the victim's employment and create an abusive working environment."

To satisfy the "severe or pervasive" standard, a plaintiff must prove that the harassment was both objectively and subjectively unreasonable. In other words, the plaintiff must show that a reasonable person would find the conduct offensive, and the plaintiff did in fact find the conduct offensive.

The severity test looks at how offensive, threatening, or inappropriate an act is. To state a claim based on a single incident—or relatively few incidents—the conduct must generally involve violence or serious threat of violence.

The pervasiveness test looks at how many incidents occur compared to a given length of time. A strong showing of pervasiveness may make up for a weak showing of severity. In many cases, pervasiveness is considered more important than severity. There is no bright-line rule as to many times the harassment must occur so as to be sufficiently pervasive.

## BILL CONTENTS

HF 10 makes clear the "severe or pervasive" standard does not apply to claims of sexual harassment under state law, just as the legislature intended when MHRA was enacted. The MHRA uses the standard that harassment is actionable when it "substantially interferes" with a person's ability to work.

### **BILL CONTENTS (CONTINUED)**

There appears to be considerable misinformation about what a business is liable for in these cases. In reality, an employer is liable if the employer knows or should have known of the harassment and fails to take "timely and appropriate action." An employer is not liable for damages in a sexual harassment suit if the employer exercises reasonable care to prevent and correct promptly any sexually harassing behavior. Employers who are taking steps to combat sexual harassment in the workplace do not need to be concerned with this bill. Clear legal standards and guardrails would still exist if HF 10 is enacted, and courts will continue to have case law to evaluate claims.