

Sexual harassment law now has a wider opportunity for employees trying to take their case to a jury. That is the result of [Gallagher v. C.H. Robinson Worldwide, Inc.](#) , a decision by the United States Court of Appeals for the Sixth Circuit. The court ruled in favor of Julie Gallagher and reversed a trial court's decision that had entered summary judgment and dismissed her sexual harassment claims against C.H. Robinson Worldwide, Inc.

Summary of Facts of the Case

Gallagher worked as one of 20 salespeople in office cubicles with little privacy. Workers regularly used sexually offensive language and viewed sexually explicit pictures on their computers. Male co-workers left open pornographic magazines on their desks. One male co-worker brought nude pictures of his girlfriend and showed them to other workers. Graphic sexual jokes and conversations took place daily among the workers.

When asked at her deposition to describe sexually offensive conduct aimed at her, Gallagher said a co-worker would sometimes call her a "bitch" when she would ask male co-workers to stop using sexually offensive language or to put away their pornography. She was also harassed by co workers who called her a fat girl and other similar references to her weight and sex.

Some of this conduct happened while her supervisor was present, and once she complained directly to her supervisor about an incident that occurred outside his presence. She also regularly complained about conduct that her supervisor witnessed. She testified that at times she went home crying, but the conduct did not prevent her from performing her job duties. Four months after she began working at C.H. Robinson, however, she quit to take a position with a former employer.

Summary of Trial Court's Rulings

The trial court ruled that Gallagher could not prove a case for sexual harassment. According to the trial court:

- The conduct was "because of her sex"; it was indiscriminate because it was not aimed at Gallagher.
- The conduct was not objectively severe and pervasive; and
- Gallagher could not prove her case because she failed to report the harassment as directed by company policy.

Summary of the Sixth Circuit's Holdings

The Sixth Circuit Court of Appeals ruled that the trial court was wrong on each point. In reaching its decision, the Sixth Circuit announced several points of law that will make the path to a jury easier for employees like Gallagher to travel. The Court held:

- A woman exposed to indiscriminate conduct that is sexually offensive and patently degrading to women suffers greater disadvantage in the terms and conditions of her employment than men.
 - The trial court focused too narrowly on the harassers' intent rather than the effect on the victim when determining whether the conduct was "based on sex."
 - The trial court erred by requiring Gallagher to show that the conduct was both objectively and subjectively severe or pervasive. The correct standard that Gallagher met was to show that the conduct created an objectively hostile environment with harassment that was subjectively severe and pervasive.
 - An employer is liable for sexual harassment of an employee by a co-worker when the harassment is pervasive and known by a supervisor.

Conclusion

These first three holdings are new statements of law. They are clearly more favorable to employees than past statements of sexual harassment law. Stay tuned to see how future Sixth Circuit, other Circuits, and the United States Supreme Court treat this opinion.

