Not all unwanted touching is harassment

In today's environment of heightened sensitivity to sexual harassment, employees sometimes lose sight of the fact that not all contact between co-workers amounts to harassment.

Workers who sue for harassment must still provide evidence that the motivation for the touching was somehow related to sex and not just part of a pattern of nonsexual touching meted out to everyone, male, female, heterosexual or gay.

Recent case: Robin worked as a computer software specialist. She claimed that during one-on-one meetings, her supervisor often reached out to rub, pat or grasp her hands. She told him this was not welcome, but he allegedly continued the behavior.

She spoke with other employees, who all said that the supervisor routinely touched them the same way.

She sued, alleging that the unwanted touching made her a victim of sexual harassment.

But the court said she hadn't presented enough evidence that the behavior was tied to sex. It appeared the supervisor touched almost all employees, regardless of their sex or sexual orientation.

The court dismissed Robin's harassment claim, along with the rest of her lawsuit.

Robin had also claimed that her employer contested her unemployment comp benefits after she voluntarily quit; she said that was in retaliation for reporting the alleged sexual harassment.

The court disagreed, explaining that employers may contest benefits when a worker quits even if the worker claims she had no choice but to quit because of alleged harassment. (*Collymore v. City of New York, et al.*, SD NY, 2018)

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