

Minnesota Supreme Court Clarifies State Law Standards for ‘Severe or Pervasive’ Harassment and Constructive Discharge

February 28, 2023



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On February 8, 2023, the Minnesota Supreme Court issued its first significant decision interpreting the state’s employment discrimination law, the Minnesota Human Rights Act (MHRA), in three years. In a ruling that will likely be hailed as a victory by employees and employers alike, the supreme court clarified the law on several issues. First, the court reiterated that a plaintiff claiming a hostile work environment under the MHRA must present evidence of “severe or pervasive” harassment by showing inappropriate workplace conduct, not simply by showing discrimination. Second, the court held that a plaintiff can establish a constructive discharge under the state law through intentional discrimination, even in the absence of an intolerable workplace, and that such a plaintiff need not show that he or she gave the employer an opportunity to remedy the discrimination before quitting. Finally, the court held that a plaintiff may not show adverse employment action, for purposes of establishing a *prima facie* case of discrimination under the MHRA, by “cumulative evidence.”

In [*Henry v. Independent School District #625*](#), Barbara Henry had worked for the defendant school district as a network technician for nineteen years when she suddenly received the first two substandard reviews of her career, and subsequently was placed on a performance improvement plan (PIP). After receiving a third negative review and written notice that the school district was considering terminating her employment, Henry resigned. She then filed suit, alleging age-based harassment arising from a hostile work environment, and age discrimination. The district court granted the school district’s motion for summary judgment, and the court of appeals affirmed the dismissal of the hostile work environment claim, but reversed as to the discrimination claim.

On review, the supreme court first addressed the hostile work environment claim, examining that theory for the first time since its 2020 decision in [*Kenneh v. Homeward Bound*](#). In *Kenneh*, the supreme court had reiterated that plaintiffs alleging a hostile work environment must prove “severe or pervasive” harassment, but that the standard was broader under the MHRA than under Title VII of the Civil Rights Act of 1964, as interpreted by federal courts, because the state law had evolved in recognition of “changes in societal attitudes towards what is acceptable behavior in the workplace.” Henry urged the supreme court to hold that under *Kenneh’s* new standard, she had produced more than enough evidence to reverse the dismissal of her hostile work environment claim. The supreme court held, however, that even under this evolved standard, a reasonable juror could not find that Henry faced a severe or pervasive hostile work environment, because despite her manager’s documented age-related comments and desire to get rid of her due to her age, there was no evidence that the

manager had ever acted unprofessionally toward her, nor did Henry allege any other age-based verbal or physical harassment at the workplace. Therefore, the court affirmed summary judgment on the hostile work environment claim.

Next, the supreme court turned to Henry's claim of age discrimination based on disparate treatment. As part of her *prima facie* case of discrimination, Henry argued, alternatively, that she had suffered adverse action in the form of a constructive discharge, and/or that the "cumulative evidence" of discrimination collectively constituted adverse action. As to the first argument, the court stated that under state law, a constructive discharge could arise either from a hostile work environment or from discrimination in the form of disparate treatment. Because Henry's constructive discharge claim in this case arose from disparate treatment, she did not have to prove a hostile work environment, nor did she have to show that she had given the school district an opportunity to remedy the situation before she quit. She did have to prove, however, either that the school district's actions were intended to force her to quit, or that her resignation was a reasonably foreseeable consequence of those actions. The supreme court held that Henry had submitted enough evidence to do both, based on "her PIP and the circumstances surrounding it." The court therefore reversed summary judgment on that claim.

Finally, the court addressed Henry's alternative theory to establish a *prima facie* case of discrimination: that she had suffered an adverse employment action "based on the cumulative evidence she submitted." Reversing the court of appeals, the supreme court rejected that argument, declining to expand the definition of adverse action under the MHRA to include the cumulative impact of "the aggregation of discrete acts that would not otherwise ... be actionable if considered in isolation."

Key Takeaways

With its in-depth analysis of harassment and discrimination claims under state law, the *Henry* opinion provides valuable guidance for employers that have employees in Minnesota. First, while the "severe or pervasive" requirement still weeds out weaker harassment claims, that barrier is lower under the MHRA than under Title VII. Therefore, employers may want to continue to train their employees to avoid offensive workplace conduct, and to train managers to recognize and take appropriate, immediate action when they witness or receive reports of harassment. In addition, the supreme court's decision was a "mixed bag" as to discrimination claims based on disparate treatment, rejecting the "cumulative impact" as a method to establish adverse employment action, but confirming that an employee can prove a constructive discharge through intentional discrimination, without showing a hostile workplace, and without giving the employer an opportunity to remedy the discrimination before quitting. To reduce or eliminate that risk, employers may want to make sure that policies and practices—and of course, training—are in place to ensure that protected class characteristics are not a factor in employment-related decisions.