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A Briefing on Recent Legal Decisions Impacting the Workplace

Illinois Supreme Court Says Employers are Strictly Liable for Sexual Harassment Committed by any Supervisory Employee

The Illinois Supreme Court significantly departs from Federal precedent and holds employers strictly liable for sexual harassment by supervisory employees even in the absence of immediate supervisory authority over the alleged victim.

On April 16, 2009, the Illinois Supreme Court ruled that an employer is strictly liable for sexual harassment committed by any supervisor, regardless of whether the supervisor had any actual authority over the complaining party or the authority to affect the terms and conditions of the complainant's employment. "Strict liability" under the law means that the employer will be held responsible for an action without a showing of carelessness or fault on the employer's part.

In *Sangamon County Sheriff's Department v. The Illinois Human Rights Commission*, Donna Feleccia, a records clerk with the Sheriff's Department alleged that she was sexually harassed by Ron Yanor, a Patrol Division Sergeant. Yanor was a supervisor, but he had no supervisory authority over Feleccia and no actual authority to affect the terms and conditions of her employment. Feleccia alleged that he sexually harassed her for two months in 1998 by inviting her to a bar and hotel, forcing her to kiss him, and appearing at her home uninvited and unannounced. Feleccia did not report any of these events to the Sheriff's Department. In 1999, Yanor sent her a forged letter on Illinois Department of Public Health letterhead claiming she had a sexually transmitted disease. Upon receipt of this letter and her determination that it was a hoax, Feleccia reported Yanor to the Sheriff's Department. Yanor was suspended without pay and given a letter of reprimand. Unhappy with what she believed was an inappropriate response, Feleccia informed management of the previous behavior.

Feleccia filed suit with the Illinois Human Rights Commission (IHRC) claiming a violation of the Illinois Human Rights Act. The Act's prohibition of sexual harassment provides that an employer shall be responsible for sexual harassment of the employer's employees "by nonemployees or nonmanagerial and nonsupervisory employees only if the employer becomes aware of the conduct and fails to take reasonable corrective measures."

The IHRC found the Sheriff's Department was strictly liable because Yanor was a supervisor and Feleccia established she was sexually harassed. The Illinois Appellate Court, using well-established Federal and Illinois precedent, reversed the decision, finding that the Sheriff's Department was not strictly liable because of Yanor's lack of supervisory authority over Feleccia and because the Sheriff's Department took reasonable corrective action after it learned of the alleged harassment.

The Illinois Supreme Court reversed the Appellate Court, stating that since Yanor was neither a non-managerial nor a nonsupervisory employee, the Sheriff's Department was liable for the harassment regardless of whether it knew about it or whether it took reasonable steps once it found out. This amounts to "strict liability" and essentially leaves the employer with no defense to the claim of harassment.

The Court based its decision on the statute's language and public policy. The majority held that the terms "nonmanagerial" and "nonsupervisory" were unambiguous. Since Yanor was neither, the fact that the Sheriff's Department took reasonable corrective measures once it learned of Yanor's conduct did not shield the Sheriff's Department from liability for Yanor's acts. Additionally, the Court noted, since supervisors are the "public face" of the company and employers have the opportunity and obligation to train supervisors to be aware of the law prohibiting sexual harassment, it is not unfair to hold employers strictly liable for the act of all supervisors, regardless of their actual authority over an individual employee. Lastly, the majority defended its position based on public policy, finding that its decision would further the purpose of the Act by helping to prevent workplace harassment.

This decision is a major departure from Title VII, the Federal law prohibiting workplace discrimination and harassment. Both Federal courts interpreting Title VII and previous Illinois decisions have held that an individual is a "nonsupervisory employee" unless he is the complaining party's immediate supervisor or possesses the authority to directly affect the terms and conditions of that person's employment.

Employers should be mindful of the difference between Federal and Illinois law on harassment. Defenses employers have under Federal law when a supervisor is accused of harassment, including lack of supervisory authority over the complainant, lack of authority to affect terms and conditions of the complainant's employment, lack of knowledge, or taking reasonable corrective action, are no longer available when a claim that is based on supervisory behavior is brought under the Illinois Human Rights Act. Employers now face strict liability for a much larger subset of employees, and they will find their lack of knowledge or the fact that they took appropriate corrective measures of little assistance in defending these claims.

Employers should take proactive steps to minimize their risk of complaints and suits based on sexual harassment by conducting thorough and regular workplace training on harassment. Employers should have a clearly articulated and consistently enforced sexual harassment policy in its handbook and should train all supervisors, current employees and new hires on identifying and preventing harassment. Training for supervisors should particularly highlight their role in preventing harassment in the workplace, as well as the potential for strict liability if they fail to take this role seriously.

If you have any questions about sexual harassment, training or employee policies, please contact Vanessa L. Smith or another attorney at Vantage Legal, P.C. at 312.440.0602 or email us at info@vantage-legal.com.

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