



LANDMARK CASE:

Office Affairs Are Sexual Harassment.

BY RITA RISSER, ATTORNEY AT LAW

The California Supreme Court recently became the highest court in the country to find that a manager's affairs created an illegal hostile environment for other women. Although not binding outside California, this case may well be cited by courts in other states when faced with the same issue.

The case involved a prison warden who for seven years had affairs with 3 of his subordinates at the same time. Throughout this time, he gave them unfair advantages. He gave them opportunities to train that were denied to other women. He promoted them into supervisory positions over other women who were more qualified. He also allowed his lovers to abuse women who complained about the affairs. After the other women complained, they were retaliated against by both the lovers and the warden. One of the lovers physically assaulted a woman who complained.

The Court said, "The evidence suggested Kuykendall [the warden] viewed female employees as 'sexual playthings' and that his ensuing conduct conveyed this demeaning message in a manner that had an effect on the work force as a whole. Various

employees, including plaintiffs, observed Kuykendall and Bibb fondling one another on at least three occasions at work-related social gatherings. One employee reported that Kuykendall had placed his arm around her and another female employee during one such social event, adding that Kuykendall had engaged in unwelcome fondling of her as well. Bibb and Brown bragged to other employees, including plaintiffs, of their power to extort benefits from Kuykendall. Jealous scenes between the sexual partners occurred in the presence of Miller and other employees. ..."

The Court went on to note:

"Certainly, the presence of mere office gossip is insufficient to establish the existence of widespread sexual favoritism, but the evidence of such favoritism in the present case includes admissions by the participants concerning the nature of the relationships, boasting by the favored women, eyewitness accounts of incidents of public fondling, repeated promotion despite lack of qualifications, and Kuykendall's admission he could not control Brown because of his sexual

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Big Money



\$40 million will be paid by Morgan Stanley to 67 women who were discriminated against on the basis of sex.

\$4.7 million awarded against DuPont. A woman plant worker who endured sexist slurs every day for more than a year was awarded this amount on appeal.

\$1.1 million was awarded by a California Court of Appeals to a car parts and service manager. The company made false promises to him about what his salary would be.

\$1 million settlement was obtained by the EEOC for a class of farm workers at Rivera Vineyards, mostly Hispanic women, who were allegedly sexually harassed, retaliated against for complaining, and segregated into certain jobs based on gender.



relationship with her - a matter confirmed by the Department's internal affairs report."

The Court echoed the guidelines from the EEOC that one relationship by a supervisor is not enough to create illegal sexual favoritism. Even multiple relationships may not create liability if they are kept private. It is when the behavior spills over into the workplace that a potential hostile environment is created.

What this means to you:

In this case, the warden's supervisors knew about the affairs. If you are a manager and are aware of this type of behavior (whether by a subordinate or by your management), report it immediately to your company's Human Resources Department.

Miller v. Dept. of Corrections (Cal. Sup. Ct. 7-18-05)

<http://caselaw.lp.findlaw.com/data2/california/statecases/s114097.pdf>

Company Wins Harassment Case after Supervisor Repeatedly Exposes Himself

You might think that a company with a supervisor who exposes himself repeatedly to two different women would be found liable for sexual harassment. But in a recent federal Court of Appeals decision, a company won because it had an effective anti-harassment policy, procedure and training.

The policy provided that employees could report harassment to any supervisor. It did not require they follow a chain of command. It required supervisors to report all incidents of harassment. The policy prohibited retaliation. It provided that an investigation would be conducted, it would be kept as confidential as possible, and that employees would be reassigned if necessary during the investigation.

Supervisors received anti-harassment training. Training in the policy and complaint procedure was required for all new employees. The women who were victims in this case attended the training.

The women argued they were afraid to file complaints. They did not allege any objective evidence that the man had threatened them. Instead, they had subjective fears of confrontation. The Court of Appeals held that despite these fears, the women had a duty to follow the employer's procedure. Since they did not, they could not sue the employer for harassment. The employer won.

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What you should do:

Ensure that all supervisors and employees receive training in the law prohibiting harassment, as well as your company's policy and procedure.

Williams v. Missouri Department of Mental Health (8th Cir., May 25, 2005)
<http://caselaw.lp.findlaw.com/data2/circs/8th/041510p.pdf>

Manager Wins Retaliation Case after Refusing to Fire Associate Illegally

A regional sales manager for L'Oreal recently won her case in the California Supreme Court.

Her new director ordered her to fire a dark-skinned female sales associate because he did not think she was attractive. He said he preferred fair-skinned blondes and directed the manager to "[g]et me somebody hot." Later the director passed "a young attractive blonde girl, very sexy," and told the manager, "God damn it, get me one that looks like that."

Every time the director told the manager to fire the associate, the manager asked him for an adequate justification. Ultimately, the manager refused to fire and was forced out of the company.

One of the important issues in this case was whether the manager could claim retaliation for refusing to fire the associate, even though she never said that she believed the order was discriminatory. The Supreme Court said she did not have to explicitly say, "this is discriminatory" or "this is illegal." The fact that she repeatedly asked for "adequate justification" was sufficient to establish that the employer knew she had a reasonable belief that the order was discriminatory.

What you should do:

This case could have been avoided if HR or top management had been paying better attention. The manager in this case went from sales manager of the year to "incompetent" in less than a year. Whenever new management comes in and former top employees begin receiving negative evaluations, it may be because past management has been lax – or it may be that there is discrimination involved. Investigate! or get sued and lose!

Fair Measures specializes in training executives, managers, human resources professionals and individual contributors in practices that prevent costly employee lawsuits, and create respectful workplaces for all employees. Since 1982, we have trained over 50,000 managers and employees at over 250 of the most respected corporations in America.



New California Law Applies to Managers in All States and Countries

The California law that requires anti-harassment training for all supervisors every two years applies to anyone who manages employees in California, even if the manager is located in another state or country.

Fair Measures not only has live training, but also an interactive webinar to help you meet these requirements.

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today. The deadline

for training is

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