



Employee Wins Disability Harassment Case

BY RITA RISSER, ATTORNEY AT LAW

Disability harassment is rare, but when it does happen, the courts strongly enforce the laws against it. A recent California Court of Appeals case illustrates why all employees need to learn to follow the anti-harassment laws.

Ms. Carnes suffered from Guillain-Barré Syndrome (GBS), which left her completely paralyzed for more than a year. She later regained partial mobility, but continued to suffer from residual nerve damage such that, as of June 2000, she walked with a limp, had difficulty with stairs, would occasionally fall due to her knees giving out, and had a claw deformity in her hands. After she recovered from the initial paralysis of GBS, Carnes was diagnosed as suffering from depression, and she began taking anti-depressant medication, which she continued to take through the events underlying this lawsuit.

In June 2000, the Superior Court in Placer County hired Carnes as an account clerk. Rhonda Williamson was a co-worker in a lead position.

The work relationship between Williamson and Carnes was anything but smooth. Williamson interrupted Carnes, criticized her work, and spoke

to her in a rude and condescending way. Less often, usually when no one else was present, Williamson would yell at Carnes, get uncomfortably close to her, and behave angrily. After Carnes talked to Williamson about her limited mobility, Williamson piled objects on the floor around her desk. Williamson would also remove papers and files from Carnes's desk, then throw them back on the desktop when she was done, even though Carnes asked her to put them away. Williamson also knocked over a porcelain angel Carnes had in her workspace in what appeared to Carnes to be a deliberate act, then said something like, "Oh, I am so sorry," in a sarcastic tone.

The court of appeals held that this behavior, taken as a whole, could create a hostile work environment for Carnes. The Court held that from the very nature of some of the actions -- piling objects around Carnes's desk knowing she had difficulty walking and throwing papers and files on Carnes's desk knowing she had trouble using her hands -- that they could constitute acts of deliberate cruelty toward Carnes based on her physical

Spring 2005

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Big Money



12 African American dockworkers received a

\$2.75 million settlement as a result of racial intimidation which included hanging nooses in the workplace, assaults, threats of physical harm, displaying racially offensive graffiti, damaging property and other harassment.

Philip Morris USA was ordered to pay \$2.75 million in sanctions. While engaged in a lawsuit, the court ordered the company to preserve all potentially relevant documents. Despite the order, the company continued for two years their normal monthly email deletion policy, which called for the automatic deletion of email older than 60 days across the defendants' entire computer system.

United States v. Philip Morris USA Inc., 223 F.R.D. 1 (D.D.C. 2004).

The Equal Employment Opportunity Commission issued its year-end results for 2004. The Agency mediated 8,086 claims, resulting in \$112 million in monetary benefits. The EEOC filed 378 lawsuits, and recovered more than \$168 million as a result. More than \$251 million was obtained through pre-litigation resolutions. All told, the Agency had a record-setting year.



disability. Furthermore, it could also be reasonably inferred that Williamson's other harassing behavior toward Carnes -- interrupting her, criticizing her work, speaking to her in a rude and condescending way, yelling at her, getting uncomfortably close to her, and behaving angrily toward her -- was likewise motivated by an animus toward Carnes based on her physical disability.

What you should do:

This case illustrates how important it is for all employees, not just supervisors, to have anti-harassment training.

Carnes v. Superior Court (California Ct App 02/07/2005)

<http://caselaw.lp.findlaw.com/data2/californiastatecases/c045867.pdf>

All supervisors in California must receive anti-harassment training before 2006. California Harassment Compliance Training by Fair Measures is offered live and on the web. Contact us to find out how you can meet your legal requirements. Call 1-800-458-2778

Workplace Sexual Assaults Require More than Oral Warnings

Ms. Loughman began working in a pizza restaurant in 2000 at the age of 17. From her first day on the job, co-workers whistled at her and frequently asked if she wanted to have sex with them. She reported them to her supervisor, who said he would talk to the men. However, the comments continued throughout her employment.

One evening, about 6 months after she began working, a co-worker put his arm around her waist, pulled her into an empty room and tried to kiss her. The next day, she reported the assault to her supervisor. The supervisor told the employee if he did it again he would be fired, and he never assaulted the young woman again.

About a year later, when she was 18, she walked into a cooler to get some cheese. Two co-workers walked in behind her, turned off the light, and closed the cooler door. One grabbed her, pinned her against the wall, grabbed her chest, and tried to put his hands down her pants. She reported this incident to her supervisor and to another manager. No action apparently was taken. However, neither man assaulted her again, although they did continue to make inappropriate comments.

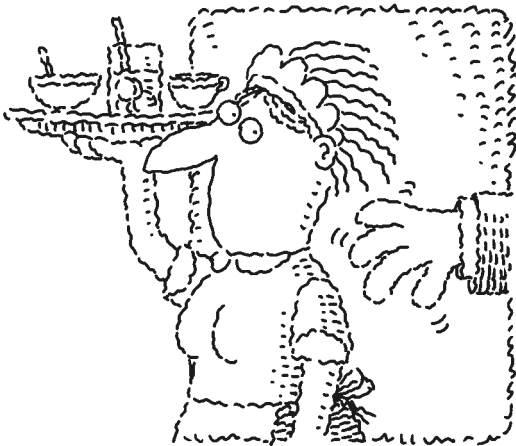
About a year later, she was assaulted by another employee who ran his hands through her hair and put his hands up her blouse. She reported this incident. At this point, the District Manager got involved and investigated all three incidents.

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As a result, the man who assaulted her in the cooler was fired.

The young woman quit and sued for sexual harassment. The Court said:

“Considering the severity of the incidents, a reasonable jury could determine that simply talking to the people involved in the first two aggressive incidents was not a sufficient response. ...



“The mere fact that none of the employees physically assaulted Loughman a second time does not necessarily mean that [the restaurant’s] response was adequate.

“In addition, the consistent stream of harassment at the restaurant suggests that [the company’s] policy was actually not very effective at all. [The manager] testified that she talked to the kitchen workers between 10 and 20 times about how to treat female employees, often in response to complaints from the female employees about inappropriate comments made to them. While a reasonable jury could view such diligence as evidence of [the company’s] commitment to preventing harassment, it might also think the frequency of the discussions suggests that a different approach was needed.

What this means to you:

Many companies have policies that require immediate termination of employees who engage in fighting, physical horseplay or other violent conduct. Sexual assault is violent behavior and in most cases should result in immediate termination.

Unethical Employee Ordered to Pay \$27 million to Company

A former Cisco Systems vice president was ordered to pay almost \$27 million in restitution after he pleaded guilty to stealing from his former employer.

Robert Gordon, a Stanford Law School graduate and once a promising Silicon Valley executive, was convicted in 2002 of wire fraud and insider trading in connection with embezzlement. He was sentenced to 66 months in prison.

Gordon's conviction stemmed from a couple of schemes. In one, he used his position to transfer Cisco-

owned stock and other funds to a fraudulent account he named "Cisco Systems, Inc., Bahamas." He sold the embezzled shares and, with the proceeds, made stock trades using insider information.

He also fraudulently persuaded Cisco to provide \$15 million to a startup called Spanlink. Gordon obtained a \$5 million return on that investment, which he kept for himself.

What this means to you:

This conviction was entered before the passage of the Sarbanes-Oxley Act, which increased the penalties for wire fraud and inside trading. The courts have no sympathy for white-collar criminals and are willing to throw the book at them.

U.S. v. Gordon, 05 C.D.O.S. 21, 9th Circuit Court of Appeals.

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Just Management has been published quarterly since 1989 by Fair Measures, Inc.
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