



New Case Requires Supervisors to Report Their Manager's Harassment

BY RITA RISSER, ATTORNEY AT LAW

UPS recently lost a sexual harassment case because several supervisors who witnessed inappropriate behavior by their manager did not report it to the Human Resources Department.

In the case, the victim alleged 17 incidents of relatively mild innuendoes and jokes. For example, once the harasser tossed his vibrating pager between the victim's legs when she was sitting in her cubicle, and several times he grabbed her hand instead of high-fiving it. The Court of Appeals admitted that the 17 incidents taken together might not be considered a hostile environment, and sent the case back to trial on that basis.

The court also noted that two of the incidents were witnessed by the victim's female supervisor. For example, the victim was talking to her supervisor over a cubicle wall. The manager walked over by the supervisor and placed his hands on the wall at the level of the victim's breasts. The victim said to the supervisor, "How does he get away with this? Why does this happen?" The supervisor "just kind of shrugged her shoulders and said

"I don't know."

Even though this incident alone did not create a hostile environment, the court held the supervisor still had a duty to report it.

What you should do:

All supervisors need to know their responsibilities under the law.

They must be trained to recognize and report all incidents of sexual behavior. Our new on-line harassment compliance training program is now available for supervisors to learn their responsibilities. Find out more at http://www.fairmeasures.com/mt_webinar.html

Employee Rights in the Blogosphere

BY ANN KIERNAN,
ATTORNEY AT LAW

According to a 2005 study by the Pew Internet and American Life Project, more than eight million people have created online journals, or blogs (from "web log"), and more than a quarter of all American Internet users—32 million people—read blogs in 2004.

As blogging has grown, so have

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Ask the Lawyers

- *Manager promoted his lover – can we demote employee but not manager?*
- *We told employee to remove religious pictures – can we be sued?*
- *Can we fire employee for refusing to sign disciplinary documentation?*
- *What should I do about my manager who harasses my subordinate?*
- *Can we allow some employees to eat at their desks but not others?*
- *Employee quit due to co-worker swearing – can he sue us?*
- *Company pays engineers straight time for overtime – is that illegal?*
- *Is jealous back-biting illegal harassment?*
- *Our employees voluntarily organized car-pool for co-worker with cancer – could we be sued?*

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Big Money

- **\$80 million** will be paid by Sodexo to settle a lawsuit that claimed it systematically denied promotions to 3,400 black mid-level managers.
- **\$1.25 million** settlement of a discrimination lawsuit that alleged aerospace manufacturer Hamilton Sundstrand allowed harassment of its Hispanic workers in Grand Junction, Colorado.
- **\$11 million** was agreed to be paid by Wal-Mart for violating immigration laws.
- **\$1.2 million** will be paid by the University of California to settle discrimination claims by 460 Asian-American employees of the Lawrence Livermore Laboratory.
- **\$12.4 million** will be received by two whistleblowers who were fired by Northrop-Grumman.
- **\$11 million** to be paid by Ford Motor Company to settle a race discrimination case brought by black employees who were barred from apprenticeship programs in factories.



conflicts with employers. The firing or discipline of blogging employees of Microsoft, Delta Airlines, Google, and other companies have been described and discussed in newspapers, magazines, radio, and, of course, on the Web.

What legal issues must employers face in the blogosphere?

A blogger's on-line reference to the employer's marketing strategy, impending merger, confidential financial data, or product development could disclose trade secrets to millions of readers around the world, and be a violation of the employer's confidentiality policy, and a violation of the employee's duty of loyalty. In a 2005 California case, Apple Computer has subpoenaed three



bloggers to find out who gave them the confidential Apple information they posted online, and the court has rejected the bloggers' attempts to invoke the journalist's privilege to protect confidential sources and has refused to quash the subpoena.

Employee blogs can create very bad publicity. One example that has received a lot of notoriety is that of Ellen Simonetti, who claims that she was fired in October 2004 by Delta Airlines for posting fully-clothed but suggestive pictures of herself in her

Delta uniform on her personal blog. Simonetti has filed a sex discrimination charge with the federal Equal Employment Opportunity Commission, claiming that while Delta has allowed male employees to have blogs, she was fired. If the men posed seductively in their uniforms and were not fired, she may have a valid claim.

Supervisor blogs may also constitute illegal harassment if they express discriminatory statements about employees. Although the employer may not be liable for such harassment, the supervisor could be held personally liable.

Other issues for employers to consider: Are employees blogging or reading blogs on company time? Tell them to get back to work!

Could the employee's blog be reasonably construed as whistleblowing about some employer conduct that's claimed to be illegal or contrary to public interest? If so, investigate the employee's allegations.

Does the employee's blog urge other workers to take some action about an internal issue? This might be "concerted activity" protected by the National Labor Relations Act, even at non-union companies.

What you should do:

Of course, most employers don't have the time or resources—or the inclination, usually—to monitor all employee chatter, whether in the break room, on the phone, in e-mail, blogs or blogs' newer offshoots, podcasts, those do-it-yourself radio shows posted online. And a specific blogging policy might not be right

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for your firm. But companies should review and update their electronic communications, Internet usage and confidentiality policies to make sure employer expectations are communicated clearly, and should make sure all managers receive training and education about employee rights and legal responsibilities of management.

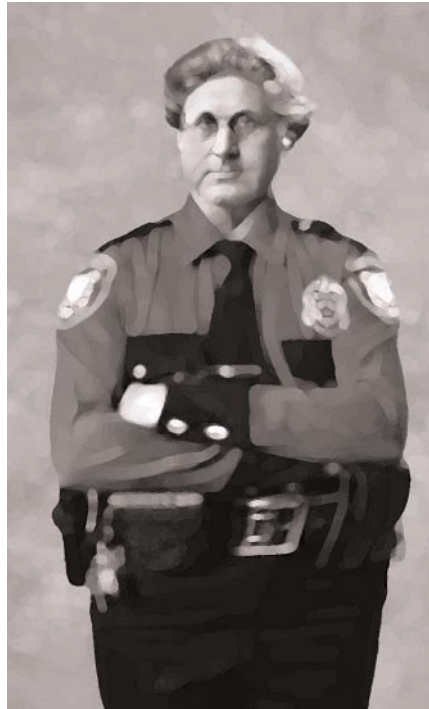


Federal Appeals Court Protects Transsexual

A transsexual police officer's jury verdict of almost \$1 million for discrimination was upheld on appeal March 22.

Barnes was a long-time police officer with a good track record who was a pre-operative male-to-female transsexual. He took the sergeant's exam and scored 18th out of 105. He was picked for promotion, and like all the others, placed on probationary status. Unlike the others, he was set up to fail. Among other things, he was forced to wear a microphone at all times and his car was equipped with video. He was not allowed to go in the field alone at any time.

Ultimately, he was terminated from his promotion based on "performance." He was the only sergeant to ever fail probation in 7 years, even though other sergeants received lower evaluations than he. His performance was judged inadequate



because he did not have "command presence." He was also told outright that he would not be kept because he was not masculine enough.

Barnes alleged he was terminated because he did not conform to sex stereotypes. The jury agreed, and the Court of Appeals upheld their verdict.

Barnes v. City of Cincinnati (6th Cir 03/22/2005)

<http://pacer.ca6.uscourts.gov/opinions.pdf/05a0142p-06.pdf>

What this means to you:
The interpretation of federal law is being expanded to include gays, lesbians, bisexuals and transsexuals. That means your policies must clearly prohibit discrimination and harassment against them. All managers should be trained on preventing discrimination and harassment against all people based on protected characteristics.



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.



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