



Company Loses Harassment Case Due to Lack of Training

BY RITA RISSE, ATTORNEY AT LAW

Here's a sexual harassment case that the company won – at first. A woman was hired as a welder in 2001. She was the only woman in a plant of 200 men. Every day she was verbally abused by many of her co-workers, often in front of her supervisors. She complained to her supervisor 3 times. The first time, he ignored it. The second time, he treated the complaint as a personality conflict, and reprimanded both the woman and her co-worker. After the third complaint, he fired her.

Although this might look like a slam-dunk case for the woman, she lost her case at trial and in the Court of Appeals. The courts held that the company took steps reasonably calculated to end the harassment, because they reprimanded the co-worker on the one occasion, and had a policy prohibiting harassment.

The state Supreme Court reversed the lower courts and the company lost the case. The Court held that the company did not take steps reasonably calculated to end harassment. The Court specifically noted that the company did not have sexual harassment prevention training.

Boyle v. Alum Line, Inc (Iowa 03/10/2006)

What you should do: Don't wait like this company and start your training program after you get sued. There are many engaging ways to train – mix them up over the years. Live training, webinars and videos all have their place.

Supreme Court Overturns TV "Friends" Case

Two years ago, we reported on a Court of Appeals case involving the writers of the popular TV show "Friends." Apparently, the writers on the show - all of them men - spent their meetings talking about their sexual experiences with women, making crude gestures, drawing organs on pictures of women, and fantasizing about having relations

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\$13 million settlement will be paid by Kmart to settle a nationwide class-action lawsuit over lack of access for disabled shoppers.

A black laborer for a pipe company in Texas whose white co-workers made racial slurs and choked him with a hangman's noose won a **\$1 million** settlement.

Cracker Barrel has agreed to pay **\$2 million** to 51 current and former employees.

**We report only settlements and final judgements, but not jury verdicts, which are frequently overturned or significantly reduced on appeal.*

"Friends" continued from page 1

with the female actors on the show.

A woman writer's assistant required to take notes in the meetings sued for sexual harassment because she was forced to listen.

The writers' defense was that since the show routinely contained innuendos and adult humor and situations, no alternative to these brainstorming sessions existed. As one writer explained, "you just never knew when something was going to pop up."

The Court of Appeals held that "creative necessity" might be a legitimate business reason for the vulgar language, and ordered the case sent back for trial. But the California Supreme Court went further, saying that creative necessity was a legitimate business reason, and dismissed the case.

What this means to you: In our Respectful Workplace programs on preventing harassment, some participants argue that they are "just joking" and don't mean to offend others. This case makes clear that there needs to be a legitimate business reason for telling sexual "jokes."

Lyle v. Warner Brothers Television Prods., California Supreme Court, No. S125171 (April 20, 2006)



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Can Employers Require Women to Wear Makeup?

BY RITA RISSE, ATTORNEY AT LAW

There is a saying in the law, "Bad facts make bad law," meaning that a case that goes to court with unusual facts can set a bad precedent. Well a recent case proves another adage, "Bad lawyers make bad law," because in this case, the lawyer representing the employee did not put on a full case, and as a result the employer won.

In 2000, Harrah's in Reno began a "Beverage Department Image Transformation" program. Part of this included The "Personal Best" program, which required new grooming and appearance standards for beverage servers. Some of these standards applied equally to both sexes, including the standard uniform of black pants, white shirt, black vest, and black bow tie. Other standards were differentiated on the basis of sex. Females were required to wear their hair "teased, curled or styled." Stockings were to be of "natural color consistent with employee's skin tone", and nail polish could only be "clear, white, pink or red." Men were prohibited from wearing makeup or nail polish, and were required to have short haircuts and neatly trimmed fingernails.

A woman who had been a bartender at Harrah's for almost 20 years refused to wear makeup, and was fired. She sued for sex discrimination. Unfortunately, her attorney did not submit any evidence of the cost of makeup or the amount of



time it takes to put on makeup or style hair. Thus the Court was able to assume that the cost and time were minimal, and does not place a burden on women different from the burden placed on men.

The Court held that the employer could require women to wear makeup.

What you should do: Employers are always allowed to require employees to have a "professional appearance." To be safe, employers may have different standards for men and women only if the impact of the differences is comparable. For example, men and women can be required to wear different uniforms, because there is no gender difference in the amount of time it takes to put on the different uniforms.



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