



Office Affairs Lead to Successful Retaliation Claim

BY RITA RISSE, ATTORNEY AT LAW

Last August, the California Supreme Court held that several office affairs by a manager could lead to claims of hostile environment by other women in the office. In September, in Missouri, another case of multiple office affairs by a manager led to a successful claim of retaliation – by the manager!

In this case the manager allegedly had affairs with 8 to 10 women in the office. Two of the women, he claimed, sexually harassed him after he terminated his relationships with them. One frequently came around his desk and said she was attracted to him. The other woman made unannounced visits to his home. He complained that the harassment was making it difficult for him to perform his job.

He filed a harassment claim that was investigated by the employer. During the investigation, the women denied they harassed him, although some co-workers did corroborate that the one woman hung around his desk. Based on the investigation, the employer terminated the manager for filing a false complaint. The manager

sued for retaliation, and won.

The Court of Appeals said, “It cannot be the case that any employee who files a Title VII claim and is disbelieved by his or her employer can be legitimately fired. If such were the case, every employee could be deterred from filing their action and the purposes of Title VII in regards to sexual harassment would be defeated. However, it also cannot be true that a plaintiff can file false charges, lie to an investigator, and possibly defame co-employees, without suffering repercussions simply because the investigation was about sexual harassment. To do so would leave employers with no ability to fire employees for defaming other employees or the employer through their complaint when the allegations are without any basis in fact.”

The Court held, “In this case, the investigator’s belief that Gilooly (the manager) was lying was the basis for the DoA’s (the employer) decision to fire Gilooly. According to the termination letter, the belief that Gilooly was lying was founded solely on the statements of other employees and witnesses. The letter contained

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Ask the Lawyers

- *Employee is harassing new manager – what should we do?*
- *Manager terminated for violating “no termination” policy – is this legal?*
- *How do we handle employees with AIDS or hepatitis?*
- *How can sexual harassment classes prevent lawsuits?*
- *Straight manager at gay company “misunderstood” harassment – what should we do?*
- *“Micro-managing” female boss jokes male employee is “small” – is this harassment?*
- *Can we fire a manager for poor attendance?*
- *Employee out on disability commits felony – can we fire him?*
- *Can we exempt top management from our vacation policy?*

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Big Money



\$15.6 million to be paid by Electronics Arts for failing to pay overtime to entry-level computer graphic artists.

\$3 million upheld on appeal by a California court for sexual harassment.

\$2 million jury verdict upheld by a Court of Appeals in a case of anti-gay harassment.

\$1.5 million jury verdict upheld in favor of female firefighter.

\$1.2 million awarded to black employee of ConAgra for race harassment that included placing nooses in the work area.

\$1 million+ awarded by California appeals court to white police officers for race discrimination.



no independently verifiable evidence that contradicted Gilooly's allegations. Without such additional corroboration, the statements in the termination letter amount to little more than a description of conflicting stories with the employer disbelieving Gilooly's version of the events. Had the investigator found a clearer record of deception and detailed the basis for such findings, a court could find that the firing was not for protected conduct."

WHAT YOU SHOULD DO:

Harassment complaints should be handled in such a way that they do not affect the employment of the people involved. If it's a "he said, she said" situation, in most cases the employer should not assume that one person is lying and terminate on that basis.

In addition, this case points out another reason why employers should strongly discourage affairs in the office. As this case shows, anyone and everyone involved in the situation could end up suing!

Gilooly v. Missouri Dept of Health (8th Cir 08/31/2005)

<http://caselaw.lp.findlaw.com/data2/circs/8th/042460p.pdf>

FBI Agent Loses Harassment Case, but Wins on Retaliation



A 20-year veteran FBI special agent was the highest-ranking agent in her office and consistently received Superior performance ratings and commendations for her work. A new, male, supervisor was brought in and suddenly she could do nothing right. The supervisor gave her a Superior rating, but wrote her up for minor incidences. In response, she filed a claim of sex discrimination. A short time later, the supervisor gave her an unscheduled "interim" evaluation in which he rated her overall as unacceptable. He continued to write her up, queried people she worked with for evidence of her problems, and began termination proceedings.

While the process was on-going, the agent quit her job and sued for discrimination, harassment and retaliation. The Court of Appeals held, based on the evidence, that she could not prove the reason the supervisor treated her the way he did was due to her sex. However, the Court held



that the evidence was that he had retaliated against her for filing the initial claim of discrimination. The agent was allowed to go to trial to prove her damages in front of a jury.

WHAT THIS MEANS TO YOU:

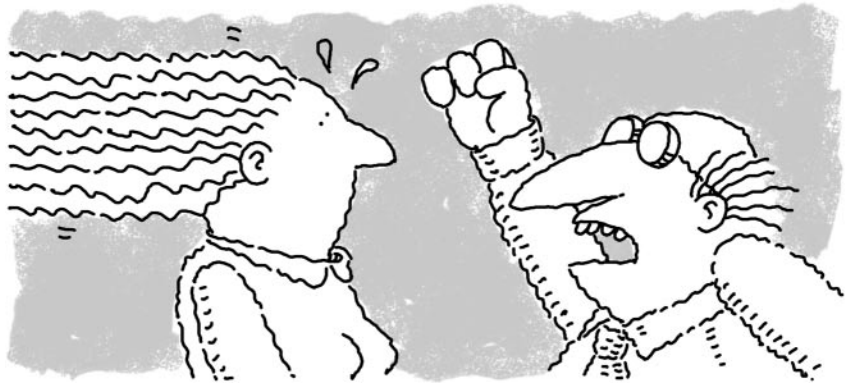
Whenever an employee files a claim of discrimination or harassment and remains employed, it is difficult to avoid a claim for retaliation. Seek legal counsel immediately!

Screaming at Women is Sexual Harassment

Perhaps you've had the experience of working with a "screamer" – the supervisor who yells at men and women about their work and generally makes life miserable for everyone in the office.

We've always said that an "equal opportunity harasser" cannot be guilty of sexual harassment if he yells at men and women equally. But the Ninth Circuit Court of Appeals recently said that equal opportunity harassers could be sued for sexual harassment where the screaming affected women employees more than men.

The supervisor in this case was accused of repeated and severe instances of shouting, screaming, foul language, invading employees' personal space (including one instance of grabbing a female employee from behind), and threatening physical gestures, all apparently following little or no provocation. However, the behavior was not, on its face, sex- or gender-related. No one testified that he made sexual overtures or lewd comments, that he referred to



women employees in gender-specific terms, or that he imposed gender-specific requirements upon women employees.

The court found that on at least one occasion, the supervisor also screamed at a man. But the court said this man did not have the same severity of reactions as the women, whose reactions included crying, feeling panicked and physically threatened, avoiding contact with the supervisor, avoiding submitting overtime hours for fear of angering the supervisor, calling the police, and ultimately resigning.

Based on the different treatment and the different reactions, the court allowed the women to sue for harassment.

WHAT THIS MEANS TO YOU:

Abusive supervisors are not only bad for morale and lead to higher turnover, they may also subject companies to suits for harassment.

Such supervisors should be warned, given opportunity to improve through training, offered counseling, and ultimately terminated if they don't treat employees with respect.

Christopher v. National Education Association Alaska

<http://caselaw.lp.findlaw.com/data2/circs/9th/0435029p.pdf>



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