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The GSH 60-Second Memo

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No Good Deed Goes Unpunished

By: Emery K. Harlan, Esq.

Question: When would an employer not want to read these words in a court opinion: "This is not a case about the sexual harassment of an employee, but about the litigation harassment of an employer. The district judge was right to end it."

Answer: When they come in a dissent, rather than the majority's opinion.

A recent case from the Seventh Circuit (Illinois, Indiana, and Wisconsin) shows how an employer can do everything right in handling a sexual harassment complaint and still wind up losing a lot of money. [Magyar v. St. Joseph Regional Medical Center, No. 07-2197 \(Sept. 12, 2008\)](#).

The plaintiff, Jessica Houston (n/k/a Jessica Magyar), was

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a 22-year old part-time employee at a hospital; she and two other college students shared one full-time shift. On two occasions, a 52-year old male co-worker sat on her lap in a lounge, and made inappropriate comments to her.

Rather than going through the hospital's procedures for handling such complaints, Houston complained informally to Pam Goddard, her supervisor. Later that day, Goddard spoke to the offending male employee, who was contrite, and never behaved inappropriately towards Houston again.

However, although Goddard told Houston she would handle the problem, she never went back to Houston and said, "It's been handled." About a month later, Houston complained to Human Resources about the way her "complaint" was handled by Goddard.

Houston's employment subsequently was terminated after the part-time positions were merged, and she was unable to apply for the newly-created full-time position because it would conflict with her class schedule.

Houston then sued, alleging she was terminated in retaliation for complaining about the sexual harassment. The district court dismissed the case, but the Seventh Circuit Court of Appeals reversed.

The Court then held that a jury could find a causal connection between her complaint and her termination, because only one month (roughly) separated the two events.

The Court also found Goddard's defense of her actions in a conversation that was secretly (and illegally) recorded by Houston to be unsatisfactory.

Goddard said to Houston during the conversation:

"I have no problem with anyone taking anything to the legal department but I am just curious when the situation was dealt with I thought it was dealt with very effectively it was a positive out come. You got what you asked for. And yet you still because you don't think I said the right words or I phrased the right sentence what was your expectation of what you wanted to see happen after taking it to the hospital department (grammatical errors in original)."

The Court of Appeals could have interpreted this as the only reasonable response any supervisor would have after

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handling a problem as well as could be expected, and then having it resurface, for no good reason, a month later.

Instead, the Court concluded that a jury could find it "defensive and accusatory," and thus, evidence that the motives for Houston's termination were indeed retaliatory.

The dissent very accurately summed up the impossible position in which this reasoning puts supervisors: "If the [supervisor] reacts indignantly to being complained about, this is taken as evidence of retaliation; but if she reacts by admitting that the complaint about her to her superior is justified, or by not protesting seems tacitly to admit that, she sets herself and her company up for a lawsuit (with the admission as evidence) for failing to handle a claim of sexual harassment in accordance with Title VII."

The dissent noted yet another flaw in the majority's reasoning: the hospital had procedures for harassment complaints - requiring that they be reported immediately to Human Resources - procedures which Houston ignored.

The dissent remarked:

"Goddard could have complied with the antiharassment policy fully just by reporting Houston's concern to the Human Resources Department. That would have delayed remediation. Goddard went out of her way, by directly confronting the alleged harasser, to make sure that the problem was resolved immediately."

Lessons

The decision offers many lessons to employers and supervisors:

- Sometimes, it is not enough just to do the right thing; you have to let someone, usually someone in Human Resources, know about it;
- Beware of secret tape-recordings by employees;
- Unilateral actions to remedy harassment outside the prescribed harassment procedures has risks; and worst of all,
- No good deed goes unpunished.

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