

Sexual Harassment Nurse Physician Doctor

The U.S. Circuit Court of Appeals for the Eighth Circuit did not approve the way the nurse chose to deal with ongoing sexual harassment by a physician at the clinic where the nurse worked, yet the court did find enough evidence to be able to vindicate the nurse's right to sue.

The harassment started in 1993 and ceased when the nurse went on a leave of absence in 1995. But the statute of limitations had run on that time period before the lawsuit was filed and it could not be an issue in the lawsuit.

The harassment resumed on an ongoing basis when the nurse returned in September, 1996. The physician was fondling the nurse and exposing himself. The nurse told a co-worker. In January, 1997 she told the clinic's office manager.

However, instead of just filing a complaint with the office manager and letting the office manager handle it, the nurse came up with her own plan.

She decided to agree to give the physician a back rub in an examining room at 12:30, and told the office manager to barge in unannounced at 12:35 to catch them in the act. The physician had the presence of mind to lock the examining room door and the plan backfired.

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

ISSN 1085-4924

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Indexed in

Cumulative Index to Nursing & Allied Health Literature™

Published monthly, twelve times per year.
Mailed First Class Mail at Seattle, WA.

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A nurse being sexually harassed on the job by a physician who is in a position of authority over the nurse cannot wait to take action, or the nurse may lose the right to sue for sexual harassment.

If the nurse's employer acts promptly after she gets around to reporting it, and as yet the physician has taken no action affecting the terms of the nurse's employment, the nurse will have lost her right to sue for sexual harassment by waiting too long.

To be sexual harassment the conduct must be offensive to the average person. Simple flirtation is not sexual harassment. People are not expected to be asexual androids in the workplace. But this physician went well beyond flirtation.

Reassignment at a comparable position away from the harasser is not considered employer retaliation.

UNITED STATES COURT OF APPEALS,
EIGHTH CIRCUIT, 1999.

Nevertheless, despite faulting the nurse for waiting to report the harassment to a superior and for hatching an ill-conceived "sting" operation, the court upheld the nurse's right to sue the clinic over the physician's behavior.

The nurse's co-worker had told the office manager right away, even though the nurse herself had not. And the office manager was the nurse's immediate supervisor. The court said that was enough to put management at the clinic on notice.

An employee can go to top management or to the human relations director, but the employee does not have to. An immediate supervisor, and in this case someone who was not herself a nurse, was sufficient to take and act upon a complaint of harassment. The office manager knew it was her job to bring it to the attention of top management for immediate action.

The court stressed that an employee who is being sexually harassed should not wait to complain. If the employer has a sexual harassment policy encouraging employees to report sexual harassment, as most do, and the employer takes action promptly once the employee finally reports it, the employee will usually be ruled ineligible to sue for what occurred while the employee was waiting to complain.

In this case to separate the nurse from the physician the nurse was reassigned to a nursing position with identical compensation and comparable authority and responsibility, which the court ruled was an acceptable remedy to prevent further harassment and not employer retaliation. [Sims v. Health Midwest Physician Services Corporation](#), 196 F. 3d 915 (8th Cir., 1999).

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