

Sexual Harassment: Nursing Director's Case Dismissed.

The former director of nursing at a nursing and rehab center sued for sexual harassment after she was fired for alleged inadequate job performance. The administrator had made disrespectful comments about women at the facility.

To be grounds for a lawsuit, the conduct must create a working environment that a reasonable person would find hostile or abusive, so severe that it would destroy the opportunity to succeed in the workplace.

Sexually discriminatory verbal intimidation, ridicule and insults must be sufficiently severe or pervasive as to alter the conditions of the victim's employment.

The conduct must be objectively offensive, and the employer must have known of it and must have failed to take steps to eliminate it.

UNITED STATES DISTRICT COURT,
LOUISIANA, 2000.

The US District Court for the Eastern District of Louisiana ruled that referring to women as "babes," addressing them as "angel" or "darling" or commenting that a new nurse is an "Amazon" is not sexual harassment.

If the victim is not affected by the conduct it cannot be considered harassment, the court ruled. The nursing director testified she was not the object of the remarks and she was not even offended by them. Drake v. Magnolia Management Corporation, 115 F. Supp. 2d 712 (E.D. La., 2000).

Sexual Harassment: Mixed Reaction To Nurse's Lawsuit.

The US District Court for the Middle District of Pennsylvania made several important points when it handed down a very complicated decision in a nurse's sexual harassment lawsuit against the nursing home where she worked.

Agency Nurse

The nurse worked at a nursing home as an employee of a nursing agency. That made no difference. The nursing home's parent corporation was her "employer" for purposes of the law of sexual harassment. She had the right to sue for sexual harassment from the male shift lead nurse, an employee of the parent corporation.

Supervisor Or Co-Worker?

In the employment area, in very general terms, the civil rights laws penalize employers for discrimination, but the laws do not penalize co-workers.

The starting point for legal analysis of a sexual harassment case is the status of the harasser relative to the victim. A supervisor's act is considered to be the act of the employer. The employer is not responsible for a co-worker's actions unless the employer knows what the co-worker is doing and fails to take remedial measures.

Adverse Employment Action

The courts also look at whether there has been adverse employment action. If a supervisor uses his position to take adverse employment action, e.g., firing, demoting or transferring a subordinate with a motivation to get sex, the employer is liable for sexual harassment. By definition, to take adverse employment action someone must be a supervisor.

Victim Must Complain

Until a victim complains about a hostile work environment and the employer fails to take action, the employer is not liable for the hostile work environment under the current state of the law. Lidwell v. University Park Nursing Care Center, 116 F. Supp. 2d 571 (M.D. Pa., 2000).

Vasovagal Reaction: Court Applies Sudden Emergency Doctrine.

A medical resident saw a patient in the emergency room who had a cut finger. Sutures were needed, so the resident herself injected some lidocaine.

The patient had a vasovagal reaction to the injection, lost consciousness and went into seizure. The resident stepped back not knowing what to do, then instead of summoning help threw herself on top of the patient, who was considerably larger than she. The seizure continued and the patient fell off the gurney striking her head on the floor.

Assuming the person is not at fault for creating the emergency, a person who is confronted with a sudden emergency which calls for immediate reaction is not expected to exercise the same accuracy of judgment as a person acting under normal circumstances who has time for reflection and thought.

This is the common law's "sudden emergency" doctrine.

COURT OF APPEALS OF TENNESSEE,
2000.

The patient sued, claiming personality changes from the head injury. The Court of Appeals of Tennessee ruled the case should be dismissed, citing the sudden emergency doctrine. A vasovagal reaction to an injection is extremely rare, the court stated. Even hospital emergency room personnel can be excused for not having the best immediate reaction to a very rare event. Ross v. Vanderbilt University Medical Center, 27 S.W. 3d 523 (Tenn. App., 2000).