

## Sexual Harassment: Facility Not Liable, Took Appropriate Action.

A member of a nursing home's non-licensed staff sued the nursing home for sexual harassment, three separate incidents involving three different residents.

The US District Court for the Northern District of Illinois ruled there was no basis to sue for sexual harassment.

However, the court left the question open for the time being whether the aide had grounds to sue for retaliation, that is, for being terminated at or about the same time she filed her complaints of sexual harassment.

### Sexual Harassment

#### By Nursing Home Resident

The general rule is that an employer can be liable for sexual harassment of its employees by clients or customers, not just supervisors and co-workers.

That being said, however, a nursing home caring for elderly dementia and mentally ill patients is a special environment where a certain amount of acting out is expected which would be way out of bounds in other contexts. It is a judgment call in every case, the court said.

#### Facility Took Prompt, Effective Action

Once the employee reported each incident to her supervisors, prompt and effective action was taken. The court ruled that excused the facility from liability for sexual harassment.

Resident #1 was counseled about his inappropriate behavior. The aide was told she did not have to enter his room alone.

Resident #2 was counseled, put on a monitoring program (details not specified) and his treating physician was notified about the incident. The aide was told she did not have to care for him.

Resident #3 was counseled, monitored and eventually transferred out of the facility after the local police were notified. The aide did not have to care for him.

#### Retaliation Claim Left Open

Whether or not an employee's claim is ruled to be valid by an administrative agency or a court, no employer retaliation is permitted for complaining about sexual harassment. **Pickett v. Sheridan Health Care Center**, 2008 WL 719224 (N.D. Ill., March 14, 2008).

***A healthcare facility, such as a nursing home, can be held liable for sexual harassment of its employees by patients or residents.***

***The courts are reluctant to impose liability on nursing homes in this context, given such facilities' mission to provide care to persons with dementia and other forms of mental illness and impairment. Crude, humiliating or insensitive comments are an expected part of the working environment.***

***Whether the one committing harassment is a supervisor, co-worker or client, an employer has a general obligation to discover and prevent sexual harassment.***

***For an employee to have grounds to sue for sexual harassment, the courts have said, the employee must be the victim of conduct so severe or pervasive as to alter the conditions of employment and create an abusive working environment.***

***Even if the verbalizations and actions rise to the level of harassment, a nursing home will not be held liable in a lawsuit if prompt and appropriate steps were taken in response to an employee's complaint.***

UNITED STATES DISTRICT COURT  
ILLINOIS  
March 14, 2008