

## Employee Training About Harassment - Useful?

A case from Pagosa Springs, Colorado provides a useful reminder for supervisors about the importance of following through on investigating harassment claims and preventing unacceptable conduct. A Fairfield Resorts employee was sexually harassed by her supervisors. She reported the harassment to a regional manager, who did not follow up but instead contributed to further harassment with threats and eventual termination.

The harassed employee sued the Fairfield Resorts for retaliation under Title VII. (*Title VII, the federal law that prohibits most workplace harassment and discrimination, covers all private employers, all state and local governments, and federally funded educational institutions. In addition to prohibiting discrimination against workers because of race, color, national origin, religion, and sex, those protections have been extended to include barring against discrimination on the basis of pregnancy, sex stereotyping, and sexual harassment of employees.*)

The court found there was enough evidence that managerial employees maliciously and recklessly retaliated against her for reporting sexual harassment, in part because Fairfield had held mandatory supervisory and employee training about harassment and retaliation under Title VII. The jury found that the managerial employees were aware of the federal prohibitions and retaliated against her anyway.

### Have a Harassment Policy? Enforce It

In the Fairfield resorts case the jury awarded back pay, compensatory and punitive damages. While County “employers” are not liable for punitive damages under Colorado law, an individual supervisor or manager who willfully disregards the law, including county anti-discrimination rules, can be held individually liable for punitive damages. In Colorado, individual punitive damages are not allowed to be insured against in an insurance policy.

An employee suing under Title VII is entitled to punitive damages against an individual if her manager or supervisor engaged in discriminatory practices with malice or reckless indifference (gross negligence under Colorado law) to her federally protected rights. Malice or reckless indifference doesn’t require egregious or outrageous conduct but instead requires proof that the supervisor acted in the face of perceived risk that its actions would violate federal law.

Before a manager or supervisor can be liable, though, the behavior must be greater than mere negligence. For example, a manager or supervisor may not be liable for punitive damages when she/he commits an unintentional wrong while acting in the scope of her/his employment. On the other hand, a supervisor may be found personally liable for punitive damages if that manager knowingly makes decisions that violate federal discrimination laws and those decisions are contrary to the employer’s good faith efforts to comply with Title VII. The local government is required by law to train its managers, supervisors and employees and can be liable for failing to train them.

### What This Means For Counties

Counties will want to:

- Adopt antidiscrimination and anti-retaliation policies,
- Make a good faith effort to educate its supervisory employees about the relevant discrimination and anti-retaliation laws and how to enforce those policies; and
- Require its supervisors and managers to make good faith efforts to enforce antidiscrimination policies by investigating complaints and taking remedial action to prevent problem behavior from occurring again.

For education and reminders on antidiscrimination laws and policies, contact the Loss Prevention unit at CTSI, phone 303-861-0507.