

Sex Harassment Continues to Challenge Employer Compliance Systems

Just when you hope that harassment complaints could be a relic of the past, we are reminded by court cases that some things don't change that quickly and that employers must be vigilant about enforcing these rules.

This year, the Equal Employment Opportunity Commission (EEOC) collected \$471,000 in jury awards after an appeal of a sex harassment case brought by the EEOC on behalf of thirteen employees, some of whom were teenagers. The damages had been awarded in 2005. The workers were telemarketers, some of them teenagers, and they were found to have been harassed sexually by their supervisors. The management behavior included verbal requests for sex, frequent groping, sexual jokes, and a constant barrage of comments about women employee's bodies. The jury award included both compensatory damages for employment and punitive damages which the EEOC was able to collect on behalf of the women after winning the appeal. (EEOC v. Everdry Marketing and Management, U.S. Ct. of App, 2d Cir., 2005, #01-CV-6329)

In another case decided this year, *West v. Tyson Foods*, No. 08-6516 (6th Circuit April 16, 2010), the employer and its managers and supervisors were collectively found to have violated most of the basics of discrimination and harassment prevention rules. A new female employee reported various behaviors by multiple line coworkers and supervisors, including overtly sexual comments and harassment, mocking her reaction to group harassment, fondling, pinching and touching sexual body parts, and similar offensive

conduct. The supervisory staff who received the reports were found to have made fun of her in reporting it, minimized the intent of the men's behavior, failed to report it to the Human Resource (HR) office as required by the policy, and failed to protect the employee from further harassment and retaliation. Even the HR manager was found to have failed to investigate it when reasonably given notice of the problem, even to the point of claiming to lose the existing interview notes. Incredibly, this all took place in a short five weeks, and was followed by evidence of a second constructive discharge of another female employee shortly afterwards, according to the unpublished court opinion. Although they punished various coworkers and supervisors for not reporting it to the HR office, the company failed to punish or restrain the original perpetrators in time to prevent further harm to the new employee.

What This Means For Counties

Don't ever think you are out of the woods when it comes to illegal harassment. Each new group of supervisors and employees must be trained, and the rules must be continuously enforced and monitored, for compliance. This year's reduction in efforts can lead to next year's liability claim.

For more information, contact CTSI at 303-861-0507.