

## Sexual Harassment May Lead to Negligence Liability

---

May 9, 2006

The Michigan Court of Appeals recently ruled that an employer may owe a duty to third parties to protect them from the uninvited sexual advances of its employees.

In *Brown v. Samuel Whittar Steel, Inc.*, a female security guard assigned to Whittar Steel sued the Company, alleging she was sexually assaulted by a Whittar Steel employee. The court initially acknowledged the longstanding rule that employers are only liable for the intentional torts of employees that are committed in the course and scope of their employment. Because the alleged sexual assault was committed outside the scope of the employee's employment, the court focused on the rule's exception—whether the Company knew or should have known of the employee's propensity for impropriety, violence, or disorder. Where an employer has such knowledge, it has a duty to use reasonable care to assure that the employee is not unreasonably exposed to third parties.

In this case, there was no evidence that the employee had any criminal convictions, a record of impropriety, or a history of committing prior violent acts. Nevertheless, the court found that Whittar Steel may have been placed on notice of the employee's propensity for sexual violence based on the security guard's prior complaints about the "sexually aggressive and predatory" comments he previously made to her. According to the court, a jury must decide whether the employee's words alone were sufficient to place the Company on notice of the employee's propensity for sexual violence.

An employer's statutory duty to safeguard its employees from sexual harassment by a third party about which it knows is well established. Now third party complaints to employers regarding their employees' sexually charged comments, without any additional evidence of an employee's prior impropriety, violence, or disorder, may create a common law duty on the part of an employer to protect third parties against its employee's uninvited sexual advances as well. Consequently, employers should take all such complaints seriously and take reasonable care to stop the conduct, regardless of whether they are made by an employee or a third party.

If you have any questions about this or any other employment practices, feel free to contact the Labor and Employment Group; Adam S. Forman at (313) 496-7654, email: [forman@millercanfield.com](mailto:forman@millercanfield.com); or Scott R. Eldridge at (517) 483-4918, email: [eldridge@millercanfield.com](mailto:eldridge@millercanfield.com). This message is for general information only and should not be used as a basis for specific action without obtaining further legal advice.