

Prompt Investigation and Effective Remedial Action Shields Company from Liability for Repeat Harasser

February 11, 2011

The Seventh Circuit Court of Appeal's recent decision in *Sutherland v. Wal-Mart Stores, Inc.* reminds employers of the importance of a prompt investigation and effective remedial action following employees' complaints of harassment. Upholding the lower court's grant of summary judgment, the Seventh Circuit found Wal-Mart Stores not liable under Title VII for a male employee's harassment of a female co-worker even though the company had previously counseled the male employee for inappropriate behavior toward another female employee. According to the Court, Wal-Mart was not liable for the harassment because the prior complaint did not give the company notice that the harasser was likely to harass again; and the company's remedial actions following the investigation were reasonably likely to end the harassment.

Company's Actions Reasonably Likely to End Harassment

In December 2006, Wal-Mart employee Arturo Aguas grabbed his female co-worker Maria Sutherland and tried to kiss her. Sutherland rebuffed Aguas' advance, but he persisted. He gave her a Christmas card intended for romantic partners, grabbed her again, kissed her on the lips, and inappropriately touched her body in and out of her clothing. Sutherland reported the incident to her supervisor. Consistent with company policy, the store's management immediately recorded Sutherland's statement and interviewed several of her co-workers. When store managers questioned Aguas about the incident, he admitted hugging Sutherland and putting his face against hers, but denied groping her or giving her an inappropriate card. Due to the conflicting stories, Wal-Mart decided not to terminate Aguas, but did institute the company's highest level of discipline. Wal-Mart also adjusted Sutherland and Aguas' work schedules so that they only worked at the same time for 90 minutes a week. Thereafter, Sutherland and Aguas did not have any further contact during their respective employments with Wal-Mart.

Subsequently, Sutherland filed suit against Wal-Mart alleging various claims, including harassment. The United States District Court for the Southern District of Indiana granted Wal-Mart's motion for summary judgment and dismissed all of Sutherland's claims. Sutherland appealed the District Court's decision as to her hostile work environment and emotional distress claims. On appeal, Sutherland contended that Wal-Mart was liable to her because it should have known that Aguas was a danger to women, based on prior allegations against him by another female employee and because Wal-Mart's investigation into Sutherland's claims of harassment was inadequate. The Court dismissed Sutherland's first argument, finding that while the prior complaint "may have put Wal-Mart on notice that Aguas was likely to engage in inappropriate workplace behavior, it did not give notice that Aguas was likely to engage in the degree of inappropriate behavior -- namely, sexual assault -- Sutherland described in her complaint." The Court also rejected Sutherland's second argument finding that Wal-Mart's investigation of Sutherland's claims was reasonably prompt and its decisions to issue Aguas significant discipline and to reduce his exposure to Sutherland were reasonably likely to end the alleged harassment.

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Guidance for Employers

This decision emphasizes the importance of responding to employee complaints in a prompt and effective manner. Employers should thoroughly train human resources and management personnel on policies and procedures for responding to employee complaints so that when an issue arises they can be resolved quickly and appropriately. Employers should also remember that adequate remedial action does not always call for the immediate termination of an employee. Instead, each complaint should be dealt with on a case by case basis with the goal of making sound decisions that are reasonably calculated to end any harassment.

For more information on this alert or on other harassment issues, please contact:

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