

Sexual Harassment: Hospital Fulfilled Its Obligations, Nurse Can Still Sue For Retaliation.

A female nurse, who was a hospital employee, and a male respiratory therapist, who worked at the hospital through an employment agency, worked together for a time in the hospital's ICU.

The court record in the US District Court for the District of Nevada pointed to sexually suggestive comments, sexual gestures, use of the Internet to cause pornographic materials to be sent to the nurse and use of abusive language by the respiratory therapist.

The harassment started in March. The nurse reported it to her supervisor in August through a formal written complaint for sexual harassment.

Supervisors Took Prompt, Effective Action

The very next day, after an expedited investigation, the respiratory therapist was issued a disciplinary notice of corrective action, told to cease the harassment, told to stay away from the nurse altogether and told if he was even seen in her work area he would be terminated on the spot.

The nurse testified the harassment stopped at this point. She actually did see him once or twice in her work area but never reported it to her supervisors.

Several months later the nurse resigned, claiming retaliation in the form of verbal abuse and unreasonably close scrutiny by her supervisors because she had filed a complaint.

Sexual Harassment Claim Dismissed Retaliation Claim Allowed to Stand

The court ruled the nurse had no right to sue for sexual harassment.

As to the retaliation claim, the court described the evidence as weak, but not implausible. The nurse would still be given her day in court to present her evidence of retaliation.

Retaliation over a good-faith complaint of harassment or discrimination can be a basis for a lawsuit even if the harassment or discrimination claim is ruled invalid. **Moss v. Washoe Medical Center, Inc.**, 2006 WL 508088 (D. Nev., March 1, 2006).

Notification that sexual harassment is occurring triggers an employer's duty to take prompt corrective action, including:

Temporary steps to deal with the situation while it is determined whether the complaints are justified;

Permanent remedial steps taken by the employer once the investigation has been completed.

An employer violates Title VII of the US Civil Rights Act if the employer knowingly tolerates sexual harassment.

Tolerating sexual harassment creates a sexually hostile work environment. The law considers that a form of gender discrimination for which the victim has the right to sue.

If an employer fails to take corrective action after learning of a co-worker's harassing conduct or takes inadequate action that emboldens the harasser, the employer is considered to have adopted the offensive conduct and its results as if the offensive conduct had been expressly authorized by the employer's policies.

UNITED STATES DISTRICT COURT
NEVADA
March 1, 2006
