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EMPLOYER LAW BLOG

Employees Are Protected From Third-Party Harassment ... Including Patients At Health Care Facilities

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Timm Schowalter Image not found or type unknown In a case straight from “Bad Grandpa” the Eighth Circuit Court of Appeals further confirmed an employer’s obligation to provide a work environment free of all forms of discrimination and harassment. In *Chavonya Watson v. Heartland Health Laboratories*, the 8th Circuit “assumed” for sake of analysis that an employer can be held liable under the Missouri Human Rights Act (“MHRA”) for harassment by a third-party who is not an employee. Ultimately, however, the 8th Circuit found that the incidents of harassments did not rise to the level of “hostile work environment” and affirmed summary judgment on behalf of the employer.

Chavonya Watson, an African-American woman, was a route phlebotomist who worked for Heartland Health Laboratories. She traveled to see patients at different sites to draw blood and collect urine and stool samples and returned to Heartland's lab to process the samples. Watson worked at Plaza Manor, a skilled nursing care facility located in Missouri, where she was assigned to a patient named Ramsey. While trying to draw blood, Ramsey physically assaulted Watson, touching the inside of her thigh and her crotch area. Watson left the patient and reported his conduct to her employer. Heartland promptly responded by immediately telling Watson that she no longer had to provide services to Ramsey and did not have to risk further physical contact with him. Thereafter, however, on several occasion in the hallways of the facility Ramsey continued to verbally assault Watson over a 10-day period, making racist and sexist remarks toward her. In all, Watson alleged 8 brief incidents of harassment over a 10 day period. Although Watson knew that Ramsey was being transferred out of the facility on account of his inappropriate conduct, she abruptly resigned by not calling in or showing up over a three day period. In fact, Watson admitted to ignoring all of Heartland’s phone calls inquiring into her job status.

The 8th Circuit found that the eight instances that Watson cited did not provide enough evidence to prove the very demanding standard for hostile work environment. The 8th Circuit rearticulated its well-established standard that sexual harassment creates a hostile work environment only when sexual conduct either results in an intimidating, hostile, or offensive work environment or has the purpose or effect of unreasonably interfering with an employee's performance. This demanding standard requires the harassment to be so intimidating, offensive, or hostile that it poisons the work environment, and the workplace must be permeated with discriminatory intimidation, ridicule, and insult. The 8th Circuit further affirmed the circuit court's summary judgment of Watson's constructive discharge claim and retaliation claim. The court held that Watson resigning without giving Heartland a reasonable chance to resolve her alleged problems was fatal to her constructive discharge claim. As a result, Watson did not suffer and adverse action to support her retaliation claim.

Employer Take Away: Employers should be relieved that not every offensive action in the workplace will rise to the level of actionable harassment. However, it was a federal court that dismissed this case without a jury trial. A similar dismissal in a Missouri state court is highly unlikely. Also, this case is a reminder of the vast reach of the MHRA. Again, *employers are liable for harassment from all third-parties including customers, patients, vendors, and suppliers*. So, it is imperative for employers to be proactive in preventing all forms of harassments by implementing non-harassment policies, properly training employees on EEO and non-harassment policies, and enforcing the policies by taking prompt and appropriate remedial measures in response to a harassment complaint of any kind.