Illinois Supreme Court Greatly Expands Employer Liability for Sexual Harassment

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On April 16, 2009, The Illinois Supreme Court in the decision of *Sangamon County Sheriff's Department v. Illinois Human Rights Commission*, expanded the Illinois Human Rights Act (IHRA), finding that an employer is strictly liable for a supervisory employee's harassment of an employee, even where no direct supervisory relationship exists. Previous to this decision, Illinois law was in alignment with Federal Law interpretation of Title VII of the Civil Rights Act of 1964. Under Title VII, an employer's liability for "hostile environment" sexual harassment depended on the harasser's status relative to the complainant. Supervisory status under Title VII, generally requires that the harasser exercises some degree of control and / or authority over the person being harassed. Based upon the *Sangamon* decision, Illinois employers will now be held strictly liable for the harassing conduct of any supervisory employee in the workplace over any employee, regardless of whether a direct supervisory relationship is present or not.

Background

Donna Feleccia was a records clerk with the Sangamon County Sheriff's Department and Sergeant Ron Yanor was a supervisor in the sheriff's department, but was not Feleccia's supervisor. In February of 1999, Feleccia received a letter addressed to her which was typed on letterhead of the Illinois Department of Public Health. The letter informed Feleccia that she may have been exposed to a sexually transmitted or communicable disease and advised her to seek further contact with a local public health office. Additionally, it was reported that several employees in the department made reference to the contents of that letter. Feleccia presented this letter to her superiors and an internal investigation was conducted. Yanor's fingerprints were found on the letter and when confronted with that evidence, Yanor admitted typing the letter but said that it was done as a practical joke. The Sherriff's Department suspended Yanor for four (4) days without pay and provided a written reprimand. This information was shared with Feleccia by the Sherriff, who asked Feleccia to drop the matter and not pursue any further legal or media actions.

Subsequently Feleccia approached senior management at the Sheriff's Department, stated that she did not believe the sanctions for Yanor were fair and that additionally, in late 1998, Yanor had made unwelcome sexual advances to her on several occasions. She was told to document these incidents in writing and submit them. The sheriff's department stated that they never received these from Feleccia.

Proceedings

Feleccia filed a complaint with the Illinois Human Rights Commission alleging sexual harassment and a claim of retaliation against Yanor and the Sangamon County's Sheriff Department. The IHRC discharged the retaliation complaint but found that Feleccia did establish sexual harassment based on a hostile work environment. The Sheriff's Department took the case to the Illinois Appellate Court, which reversed the IHRC's decision and held that the Sheriff's Department could not be held "strictly liable" for the sexual harassment because Yanor was not Feleccia's supervisor. Feleccia then appealed to the Illinois Supreme Court. The Illinois Supreme Court reversed the Appellate Court's decision and stated

that the definition of sexual harassment in the Illinois Human Rights Act was sufficiently clear to hold an employer "strictly liable" for the harassing conduct of **any supervisory employee**, whether a direct supervisory relationship existed or not.

What is "Strict Liability" and Why Should Illinois Employers Care?

As stated above, previous to this decision, the law covering sexual harassment in Illinois was akin to that promulgated by the Federal Government. Preceding the Il Supreme Court's Sangamon County decision, Illinois law (as Federal Law still does) recognized two classifications of supervisory employees. A direct supervisory relationship, wherein a supervisor had authority or influence to affect the terms and conditions of another's employment. If such a standard could not be met in regards to a supervisory employee over a complainant, then that supervisor was considered in the class of "co-employee" with all other employees not in direct or chain of command supervision to the complainant.

The significance of the above distinction, now lost in Illinois, is critical to employers. For a "co-employee"complainant to prevail in a hostile environment sexual harassment claim, the complainant needed to show that the employer was *aware of the conduct of a "co-employee" (as opposed to a "supervisor") but failed to take reasonable corrective actions.* However the inverse is true, and once an employer was aware of such conduct by a "co-employee" and took reasonable corrective action, the employer would not be "strictly liable" for the harassment. Now in Illinois (unlike the Federal Law), an employer will be held "strictly liable" for the harassing conduct of any supervisory employee, regardless of their control or authority over the complainant. "Strict Liability" prevents an employer from raising any defense even in situations where they had no actual knowledge of the existence of such behavior.

What Should Employers Do Now?

The new law in Illinois has greatly expanded the universe of supervisors for whose sexually harassing conduct an employer can be held "strictly liable". As stated, in cases where "strict liability" applies, it is simply not an option for the employer to point to any measures they had taken to address such an issue. However, in situations where "co-employees" are involved, the employer still retains their ability to absolve themselves from liability, if they take appropriate action once they are put on notice of such conduct.

In light of the Sangamon County decision, employer sponsored pro-active training in the area of sexual harassment for all supervisory and non-supervisory personnel is more crucial than ever. First "co-employees" will benefit as they will be trained as to what conduct is inappropriate and of the internal complaint procedure to follow when applicable. Employers then will have their opportunity to investigate and take reasonable corrective actions, which will also work to their benefit as a subsequent defense, if a formal claim is pursued. Separate training for supervisors has always been a prudent approach for an employer to take, in order to make the supervisors aware of the law prohibiting sexual harassment and all potential consequences for such conduct on their parts. Since Illinois employers can no longer retrospectively defend themselves against supervisory based sexual harassment by having been proactive, once put on notice, their best option is to be pro-active with targeted training to all supervisory employees, in light of the Sangamon County decision

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