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Employment Law

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Chapter 7: Sexual Harassment: A Troublesome Crew

The Plaintiff claims that she experienced sexual harassment while working for Mountain State. She said to have experienced unwelcome sexual advances, offensive statements based on her sex as well as unwelcome physical conduct. A valid claim for harassment requires the demonstration of the employee being a member of a protected class, the employee being subjected to unwelcome verbal or physical conduct, the unwelcome conduct was due to the employee’s membership in a protected class and the unwelcome conduct affected a term, condition or privilege of employment. Here, plaintiff is a member of a protected class, she is a woman. Further she was the only woman who works on the five-person construction crew. The plaintiff was subject to unwelcome verbal and physical conduct. The plaintiff was subject to male crew members making jokes about women and their bodies, the other employees hiding her tools and other employee’s banging on the bathroom door and making cat call noises. She was further subject to comments based on her sex such as that she did not belong at the construction site because she should be cooking for her man. Her boss also participated in the harassment and asked her out on dates multiple times even after she turned him down. The plaintiff’s boss further made unwanted physical advances including touching her back and buttock. Since both her co-workers and boss made these unwanted advances it appears that this conduct affected a condition of her employment. If she had further defended herself against her boss it is likely that he would have fired her. One could reasonably assume that if you are in a position where your boss makes unwanted advances if you take certain action it is likely you could be fired. This is because of the hierarchy of power and almost makes the harassment from her boss more severe than the harassment from her co-workers.

The defendant may try to avoid liability by proving that they reasonably tried to prevent and correct the harassing behavior and the employee failed to take advantage of any preventative opportunities provided by the employer. We would need more facts to truly assess if the defendant had taken any of these actions.

Another possible claim that the plaintiff could file is a hostile work environment claim. A hostile work environment exists when an employee’s workplace is so permeated with discriminatory intimidation, ridicule, abuse or insult that it alters the conditions of the employee’s employment and creates a hostile work environment. Here, the plaintiff was subject to insult, ridicule and abuse, but it is not clear that it altered terms and conditions of the plaintiff’s employment. Would need to know more about the employment conditions and if the plaintiff was able to continue her job as usual.

The defendant would likely say that this was not a hostile work environment since the plaintiff was able to continue working for them and did not make a direct complaint with the employer. Again we would want to know more facts such as, how long was she employed, what was the span of these unwelcome actions based on sex, has the plaintiff taken any action before filing this complaint, did these actions occur every day or were they more random, how much did these unwelcome actions impact her ability to feel safe on the job and more about the general nature of the harassment.