**Week 4: Employment Law and Discrimination**

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Employment Law and Discrimination

Meredith Shaw put an explicit screen saver on Jonathan Silverstein computer. This was seen by his supervisor and was career limiting for Silverstein. Jonathan believes that this resulted in him missing out on a potential promotion. To recover the loss he is suing Meredith for sexual harassment.

# Analyze Elements of the Case

## Cause of Action

The plaintiff alleged that the defendant has created a hostile work environment by using sexually explicit language. He claims that this has been going on for some time, and has finally gone too far. She put a screensaver on his computer which depicted an animated stripper. After his supervisor saw the screensaver, the plaintiff became ineligible for a promotion. This has damaged his career and needs to be compensated for the financial loss.

## Applicable Defenses

The defendant does not deny that she put the screen saver on his computer. However she claims that it is normal behavior amongst the team. She continued to state that there are four people in their team and everyone makes similar remarks. At no point has the plaintiff said that he feels uncomfortable or is being singled out.

Given that this behavior has been going on for years, it should not be seen as out of the ordinary. She also claims that she is being singled out, and the rest of the group is as liable as herself. She denies any unique responsibility for the standard operating procedure.

## Bases for Judges Ruling

The victim of sexual harassment must prove the behavior was: “unwelcome […], severe or pervasive, and create[d] an environment that a reasonable victim would find hostile or abusive (Mallor, Barnes, Langvardt, & Prenkert, 2014).” Assuming this is true, the plaintiff also needs to prove that financial losses had occur.

In this case the plaintiff cannot claim that it was unwelcome, as he willfully participates in the explicit conversations. He testified that these conversations frequently occurred during lunch. There was no reason why he had to continue having lunch with her if her behavior offended him. The screen saver that was placed on his computer was unprofessional, but it was animated and not overly offensive. Lastly the company has a zero tolerance policy for sexual harassment. If he felt the environment was hostile or abusive, then he had needed to report the problem to the human resources department.

In regards to the financial loss, he is speculating that the promotion would have been given to him. He is also speculating that her prank is what prevented him from getting the promotion. There are any number of other reasons why things he did not receive the promotion. Aside from the hiring manager testifying the reason he was passed over, it is not possible to establish that her actions resulted in the loss.

# Analyze Potential Civil Liabilities

## For the Employer

The employer is responsible for the behavior of their employees, provided the employee is acting in an authorized manner (Mallor, Barnes, Langvardt, & Prenkert, 2014). Authorization can be given explicitly or implicitly by knowing that the behavior is occurring.

Consider a scenario where the harassment had been reported to the manager, however they did nothing about it. The company would be liable, this is because the company was aware and therefore responsible for preventing it.

If the company “fail[s] to show that it took all reasonable steps to prevent the sexual harassment [they are liable] (Chelliah, 2015).” In 2008 Richardson, a harassed employee at Oracle, was awarded $130,000 due to sexual harassment. Oracle argued that there was policy against it, but that policy did not clearly state the behavior was against the law.

## For the Employee

An employee who harasses another employee can be liable for creating a hostile work environment. Most businesses have a zero tolerance policy and will fire the offending employee.

The rules are even stricter for supervisors. Supervisors are defined as anyone who “has the authority to make formal employment actions against the plaintiff (Wilson, 2012).” In these scenarios the alleged supervisor can be vicarious liability.

# Analyze Different Liabilities

## Sexual Harasser is Independent Contractor

Businesses are not less liable for independent contractors or other agents, than for direct employees (Mallor, Barnes, Langvardt, & Prenkert, 2014). An exception to this rule would be the manager tells the contractor to harass another employee. In this scenario the agent would be following the instructions of the principal. With the principal knowledgeable of the behavior they are still liable.

## Sexual Harasser is Employee

The employee is a representative of the company, and their actions are the actions of the company. If they were to harass a customer then the business could be liable for damages. The employee might also find themselves in a tort suit. Depending on the severity of the harassment criminal charges could also be raised against the employee.

# References

Chelliah, J. (2015). Sexual harassment: A costly affair for employers. *Human Resource Management International Digest, Vol. 23 Iss: 3*, 37 - 38.

Mallor, J., Barnes, A., Langvardt, A., & Prenkert, J. (2014). *Business Law: The Ethical, Global, and E-Commerce Environment 16th Edition.* McGraw-Hill Education.

Wilson, A. L. (2012). Recent developments in employment law and litigation. . *Tort Trial & Insurance Practice Law Journal*, 48(1), 187-214. .