



Workers must show adverse action to prevail on claim

By Max Nuyen, King & Ballow, La Jolla, California

kmnuyen@kingballow.com

In a case that reads like a plot to a really bad television show, the U.S. Court of Appeals for the Fifth Circuit affirmed the sexual discrimination claims of several female employees who worked at a medical clinic. The court also dismissed one worker's claim because she failed to establish she suffered any adverse employment action.

The employer, a doctor who owned the medical clinic, was a self-styled Don Juan, whose conduct included: (1) asking employees out on dates; (2) forcing them to slow dance with him at work; (3) caressing their hands during office meetings; (4) making comments about their bodies; (5) inquiring into their sex lives; (6) calling them sexually charged names such as "mamacita" and "chiquita"; (7) telling them to wear more revealing clothing; (8) rubbing their thighs and knees; (9) grabbing them on the waist and kissing them on the lips; (10) suggesting they would be able to make more money if they had sexual relations with him; and (11) asking them to sit on his lap. To make things even worse, the doctor routinely reprimanded the employees on performance-related issues each time they resisted or spoke out against his unwanted advances.

Based upon this fact pattern, the jury ruled in favor of the female workers on their sexual discrimination claim based on hostile work environment. The appellate court affirmed, finding the workers had established a hostile work environment because it was permeated with discriminatory intimidation and was objectively abusive. Furthermore, the offensive conduct occurred repeatedly, at least two or three times per week, and body contact was often involved.

The one cause of action the court did not uphold involved a "quid pro quo" claim by one of the workers. Such a claim often involves a rejection or acceptance of a direct sexual proposition, which results in a tangible employment action, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a change in benefits. Although the worker established the doctor sexually propositioned her, she failed to establish she suffered any type of tangible employment action as a result of her rejection of the doctor's advances. She was reassigned to a different department after refusing to sleep with him, but her salary, benefits, and duties remained unchanged. Therefore, the court concluded she did not demonstrate the position to which she was reassigned was inferior to the position she formerly held.





For more information contact: Max Nuyen, King & Ballow, La Jolla, California, kmnuyen@kingballow.com, phone (858) 597-6000.

For more posts of interest to health care professionals go to:
www.kingballow.com/healthcare.php

These opinions and comments are intended only for the purpose of providing recent updates and general information and are not intended, and should not be used, as a recommendation for any specific situation or entity or as a substitute for legal counsel. Always consult with an attorney for specific legal counsel concerning your particular situation.