Promulgation and Enforcement of Policies Prohibiting Unlawful Harassment (including Sexual Harassment) Is Not Only Good "Policy," but is an Employer's Best Defense

By Susan Richards Salen

The United States Fourth Circuit Court of the Court of Appeals affirmed the dismissal of a complaint filed by a female radiologic technologist who alleged that her employment was wrongfully terminated after she complained that her supervisor was sexually harassing her. Plaintiff's case was dismissed when the employer was able to prove that it had an anti-harassment policy, which it disseminated to its employees and which it faithfully and fully followed in investigating plaintiff's complaint. The case is *Crockett v. Mission Hospital Inc.*, filed in the United States District Court for North Carolina.

Unfortunately, the facts are not unusual–an employee, disciplined for improper conduct leading to termination of employment, raises an allegation of harassment. In this case, plaintiff was suspended for serious violations of the Health Insurance Portability and Accountability (HIPPA) Regulations by surreptitiously recording patients. At the time of her suspension, plaintiff complained that her supervisor had done something "horrific" but would not go into any detail.

Upon learning of plaintiff's claims that her supervisor had done something "horrific," the hospital immediately attempted to investigate plaintiff's complaint. However, the plaintiff refused to provide any details other than to say that the conduct was "horrific." Management interviewed employees and supervisors, but was severely hampered by plaintiff's refusal to cooperate or provide any information or detail whatsoever regarding the conduct. As a result, the hospital could take no action. It was not until plaintiff's employment was finally terminated for her continued, unauthorized and improper use of cell phones, despite numerous warnings, that plaintiff revealed the details of the harassment and claimed that she was sexually harassed. The supervisor purportedly made plaintiff lift up her shirt to show she was not wearing a wire, made physical contact (in the form of the supervisor sitting with his knees outside hers) and asking for a kiss.

The plaintiff conceded that the employer had an unlawful harassment policy, which contained a mechanism for reporting such harassment. Plaintiff also had to concede that the employer took reasonable steps to prevent harassment. In addition, plaintiff had to concede that the employer made an effort to investigate her complaint.

In affirming the dismissal of the case below, the appellate court found:

> In light of a fully functioning anti-harassment policy and its undertaking of a prompt and thorough investigation, we conclude that the employer met its burden on the first element of its affirmative defense. Summary judgment for the employer is affirmed.

The *Crockett* case is a good reminder that having and enforcing an effective anti-harassment policy is not only good practice, but remains an employer's best defense.

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