



APR - ALTERNATIVE MARKETS

DEDICATED TO PUBLIC ENTITY

LESSONS FROM LOSSES: HE SAID/SHE SAID

"The only mistake in life is the lesson not learned." —Albert Einstein

DESCRIPTION

A female engineer in her late thirties was denied a promotion to lieutenant within the city's fire department. The engineer had nine years' experience within the department and was on the "short list" for promotion. She alleged she was refused promotion because of gender discrimination, sexual harassment, and retaliation.

Throughout her tenure, the female engineer had complained many times about the culture of the fire department. Male coworkers walked around in boxer briefs, called her derogatory female names, made vulgar gestures toward her, and frequently watched pornography on their computers. Each time she complained about the activities and behaviors of the department, she was met with verbal or written reprimands or pulled from desired posts. The outgoing male lieutenant proclaimed that he had changed his mind about retiring to "stick it" to the female engineer.

The engineer filed multiple complaints regarding the culture of the department and was eventually placed on administrative leave after emailing the department's deputy chief directly regarding the harassment and discrimination. She remained on suspension for three years. As a result of the disparaging treatment and job loss, the engineer suffered from anxiety, depression, flashbacks, emotional distress, and post-traumatic stress disorder.

THE RESULT

The case went to trial for a duration of two weeks. After a two-hour deliberation, the jury found in favor of the female engineer and against the city on claims for gender discrimination, sexual harassment, and retaliation by finding a causal connection between the adverse employment actions and the complaints filed with the department. The jury empathized with the plaintiff and awarded her just over \$11 million for medical expenses, past and future wage loss, emotional harm, and punitive damages.

THE PROBLEM

The city argued that the female engineer was a disgruntled employee, and the allegations of harassment and hostile work environment were unfounded. The defense produced no evidence of harassment training for employees or investigation results for the multiple complaints filed.

The defense strategy was to undermine the allegations through depositions and experts. Testimony of the city's human resources representative revealed that the department leaders collectively planned to discredit the engineer through their testimony. The defense relied on depositions from male colleagues in the fire department to refute the allegations of sexual harassment and hostile work environment. The defense admitted that several years earlier, in an isolated incident, a staff member was disciplined for watching pornography at work. The



defense also hired an expert in psychology who concluded that the plaintiff's symptoms originated from a preexisting personality disorder unrelated to any alleged misconduct by the department.

The plaintiff hired several experts to support her claims of mistreatment and damages. A personnel expert testified about the department's culture, lack of policies, and failure to hold personnel accountable. Additionally, the plaintiff retained a computer forensics expert who found countless pornographic files on department computers. The plaintiff's medical and mental health providers testified that all her symptoms were related to employment and persecution at the fire department. Additionally, the plaintiff secured experts in vocational rehabilitation to calculate back pay and future wage loss in excess of \$1 million. The plaintiff's emotional injury claim was further supported by the fact that she submitted to a psychological exam during the hiring process that scored her with outstanding marks. The plaintiff incurred just over \$50,000 in medical and mental health expenses.

LESSONS LEARNED

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex, and national origin. It is unlawful to harass a person because of that person's sex or retaliate against an employee for filing a complaint believed to be made in good faith. Harassment may include sexual harassment, unwelcome sexual advances, requests for sexual favors, or other verbal or nonphysical harassment of sexual nature. Although the law does not prohibit simple teasing, offhand comments, or minor isolated incidents, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (<https://www.eeoc.gov/laws/guidance/policy-guidance-current-issues-sexual-harassment>).

Employers are encouraged to take preventive and remedial action to prevent or address complaints.

- Develop and implement a policy regarding sexual harassment and hostile work environment.
 - Include definitions and examples of unacceptable behavior, how to file a complaint, the grievance process, and consequences of misconduct.
- Schedule mandatory, recurring training for all employees on harassment and hostile work environment and document employee completion.
- Offer an ethics hotline to employees to report employment concerns.
- Hold leaders accountable to model professional behavior and respect staff diversity.
- Investigate allegations of misconduct by someone knowledgeable in the subject matter and unbiased in the outcome.
- Conduct a follow-up inquiry to determine if the measures taken were effective when remedial action is warranted.
- Ensure promotion panels are diverse, and hiring standards are applied consistently to all candidates.
- Review adverse employment action recommendations for compliance with anti-retaliation statutes.
- Implement technology to block websites that do not meet professional standards.

Note: Although the statements above are based on an actual loss, some of the facts may have been altered for purposes of illustration and education. This information should not be relied upon for legal advice; please contact an attorney for your specific needs.



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