

## Prompt Action Saves Employer from Sexual Harassment Liability

"An ounce of prevention is worth a pound of cure."

A local employer, Eastman Kodak, recently highlighted the importance of taking internal sexual harassment complaints seriously when a federal court in Chicago ruled in its favor on a former employee's sexual harassment lawsuit. Three days after Christine Czemske complained to her supervisor that a co-worker was sexually harassing her, Eastman Kodak fired the co-worker. The court decided that Eastman Kodak was not liable for the co-worker's harassment because the company took "prompt and appropriate corrective action" that was "reasonably likely to prevent the harassment from recurring."

Czemske's co-worker, Anthony Buongiorno, used a computer to superimpose Czemske's identification card photo onto two provocative images of nearly naked women. Czemske first became aware of the images when Buongiorno showed them to two of her supervisors in her presence. Czemske immediately asked Buongiorno to turn the images over to her, but she did not complain to Eastman Kodak at that time. Although Buongiorno complied with Czemske's request to turn over the copies of the pictures, he did not erase the images from his hard drive.

Two years later, Czemske was promoted, and during a celebratory lunch held in her honor, Buongiorno again displayed the provocative images, this time referring to them as Czemske's new "business cards." Buongiorno urged several people to view the images, including Michael Griffith, who was Czemske's immediate supervisor.

After this incident, a visibly upset Czemske followed the procedures in Eastman Kodak's sexual harassment policy by reporting the incidents to Griffith. Although Czemske told Griffith she was going to resign, she did not ask that disciplinary action be taken against Buongiorno. Griffith told Czemske that he would immediately address the matter with human resources and Buongiorno, and suggested that she take several days off to reconsider her resignation decision. Czemske, however, declined his invitation and never returned to work.

Griffith promptly met with Buongiorno and instructed him to "cease all activities with the images." Griffith then consulted human resources, where he was informed that the images violated Eastman Kodak's zero-tolerance harassment policy. Accordingly, the Company terminated Buongiorno's employment just three days after Czemske made her complaint.

In her lawsuit against Eastman Kodak, Czemske claimed that Buongiorno's behavior created a hostile work environment. While the court found that Czemske had submitted sufficient evidence to establish a subjectively hostile work environment, it declined to hold Eastman Kodak liable for Buongiorno's actions. The Court stated that an employer is only liable for harassment *by a co-worker* if it is negligent in discovering or remedying the harassment. In this case, the Court ruled the Company's fast and effective response to Czemske's internal complaint (i.e., its firing of Buongiorno) was "undeniably the most effective means of preventing further harassment." As a result, it was not liable.

This decision holds valuable lessons for employers. First, it is imperative that an harassment prevention policy be in place and disseminated to all employees. Second, when an employer receives an internal harassment complaint from an employee, it must conduct a prompt investigation and, where warranted, take effective remedial action. As Eastman Kodak demonstrated, when a company conducts a prompt investigation and takes decisive, effective remedial action, it can avoid liability for harassment

by a non-supervisory employee. Given the damaging publicity caused by sexual harassment claims and the high costs of litigation, an employer with an effective harassment prevention policy who trains supervisors to respond immediately to sexual harassment complaints can avoid the proverbial "pound of cure." Have you re-examined your harassment prevention policy recently? Do you train your employees and supervisors on harassment prevention? If not, the time to take that "ounce of prevention" is now.

David would like to thank Christina LaRosa, a second year law student at Loyola University of Chicago School of Law, for her assistance in drafting this article.

### *For More Information*

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