

Liability in workplace essay sample



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1. Teddy's Supplies' CEO has asked you to advise him on the facts of the case, and your opinion of their potential liability. He wants to settle the case. Write a memo to him which states your view of whether the company is exposed to liability on all issues you feel are in play. Include in your memo any laws which apply and any precedential cases either for or against Teddy's case which impact liability. Include in the memo your suggested "offer of settlement" to Virginia. Back up your offer using your analysis of the case against Teddy's

Dear Mr. Moore,

After an independent study and review of this case, it is my judgment that Teddy's Supplies is indeed liable for workplace and sexual harassment against Virginia Pollard. A careful review of the case also indicates that the plaintiff, Ms. Pollard, was placed in a "hostile" environment under the supervision of Steve King. While it is not illegal for one woman to work among a group of men, careful judgment should be used by the employer in determining if the work environment is suitable for males and females. As a general rule, it is not good practice to have one female working with all male colleagues.

First of all, I will define these three types of sexual harassment as stated by:
http://www.strategichr.com/shrsweb2/harassment_01.shtml

a) "Workplace harassment is any unwelcome or unwanted conduct that denigrates or shows hostility or an aversion toward another person on the basis of any characteristic protected by law, which includes an individual's race, color, gender, ethnic or national origin, age, religion, disability, marital

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status, sexual orientation, gender identity, or other personal characteristic protected by law. A conduct is unwelcome if the employee did not solicit, instigate or provoke it, and the employee regarded the conduct as undesirable or offensive”.

Pollard was constantly being harassed by her six male colleagues as she was the victim of pranks perpetrated by them that ranged from taping her desk drawers shut, locking her out of the guard shack and therefore hindering her from performing her job due to the fact she was responsible for watching the warehouse inventory, filling the guard shack with trash, and putting her into unnecessary risk of harm by backing a forklift up to the guard shack door and making it backfire into her ear. Ms. Pollard could have sustained serious injuries if the forklift driver had accidentally backed through the guard shack and as a result struck her. Standard forklifts weigh three tons and could easily run through the guard shack. Most forklifts run off of propane or butane and emit strong fumes when running. The fumes from the forklift after backfiring could cause physical damage to someone with asthma and sinus problems. The backfiring of the exhaust is rather loud, and multiple occurrences instigated by the forklift driver of trapping Pollard in the guard shack to hear the blast in a small room could cause irreparable damage to Pollard’s eardrums.

b) “ Sexual harassment is a form of sex discrimination that involves unwanted or unwelcome conduct of a sexual nature. This applies to harassment by a person against another person of the opposite sex as well as harassment by a person against another person of the same sex. The California Fair Employment and Housing Act defines sexual harassment as “

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harassment based on sex or of a sexual nature; gender harassment and harassment based on pregnancy, childbirth, or related medical conditions,” and many forms of offensive behavior.”

In one particular incident, Ms. Pollard was taunted by her coworkers and one of Teddy’s drivers. The driver was sitting in her chair, and she asked him to get up. When he refused, she tried to forcibly push him out of the chair; and as she was doing this he grabbed her, turned her over his knee, and then spanked her. This is a blatant form of sexual harassment due to the fact that Ms. Pollard in no way showed any signs of sexual arousal toward the driver that would encourage and/or provoke him into spanking her.

c) “ Hostile environment” harassment occurs when an employee is subjected to unwelcome or unwanted sexual conduct that is sufficiently pervasive or severe to alter the terms or conditions of the employee’s employment, such conduct unreasonably interferes with an employee’s work performance or creates an abusive, intimidating, offensive or hostile work environment. A manager, supervisor, co-worker, or even a non-employee such as a vendor, customer or third party can create a hostile environment.”

Steve King, Pollard’s supervisor in the warehouse, and his workers created a hostile environment for her. In August of 2008, King and the other warehouse workers put a sign on a truck that read “ HARDHAT REQUIRED/BRA OPTIONAL.” King and another employee called Pollard over to look at the sign and tried to instigate her into doing as the sign said. She refused and tried to walk away, and as she did, Steve King told her that he wouldn’t report her to management if she went along with their request.

These words motivated her to pull up the back of her shirt and expose her bra.

In conclusion, I recommend that Teddy's Supplies offer Virginia Pollard the position that she was terminated from with assurance that she will not be assaulted in any manner while on the job. Pollard performs her job well when circumstances allow. She would be an asset to the company in her current position provided that she is not harassed. Furthermore, it is my recommendation that Steve King be disciplined for this act and as a result be demoted from his supervisor position with no chance of getting another job of this type while working for Teddy's Supplies. A written warning should be placed in his personnel file stating the reasons for this disciplinary action. The offer of settlement to Pollard should include lost wages from the day she was terminated to the day that she is reinstated.

According to the EEOC website, Teddy's could be subject to liability. " An employer is always liable for harassment by a supervisor on a prohibited basis that culminates in a tangible employment action. No affirmative defense is available in such cases. The Supreme Court recognized that this result is appropriate because an employer acts through its supervisors, and a supervisor's undertaking of a tangible employment action constitutes an act of the employer."

<http://www.eeoc.gov/policy/docs/harassment.html>

2. The Circuit Court overturned the decision of the NJ Human Rights Commission which had found that Pollard was the victim of Sexual Harassment and disparate treatment. Please answer these questions: A.

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Define sexual harassment, including both quid pro quo and hostile environment harassment. Which type(s) do you feel Pollard was a victim of (if either.) Provide law or a case to support your position. If you feel Pollard was not a victim of harassment in this case, explain why you feel that way, and provide law or a case to support your position. (10 points) “ Quid pro quo” (this for that) harassment occurs when an employee is offered some job benefit such as promotion, pay raise, etc., in return for sexual favors or is subjected to some adverse action because of a refusal to submit to a request for sexual favors. http://www.strategichr.com/shrsweb2/harassment_01.shtml

“ Hostile environment” harassment occurs when an employee is subjected to unwelcome or unwanted sexual conduct that is sufficiently pervasive or severe to alter the terms or conditions of the employee’s employment, such conduct unreasonably interferes with an employee’s work performance or creates an abusive, intimidating, offensive or hostile work environment. A manager, supervisor, co-worker, or even a non-employee such as a vendor, customer or third party can create a hostile environment. The EEOC has established the following factors to determine whether a hostile work environment has been created: * Whether the conduct was unwelcome or unwanted;

* Whether the conduct was verbal or physical, or both;

* Whether the conduct was a one-time occurrence or was repeated (e. g., continuous period of harassment);

* Whether the conduct was hostile and offensive;

* Whether others joined in perpetrating the harassment; and

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* Whether the harassment was directed at more than one individual.

http://www.strategichr.com/shrsweb2/harassment_01.shtml

It is my belief that Pollard was a victim of hostile environment harassment.

Pollard was continuously subjected to pranks that were directed solely for her. These pranks interfered with her job performance and caused her undue stress. All of these factors indicate that she was the victim of "hostile environment" harassment. B. Name an appellate court case where an employer was found liable for either quid pro quo or hostile environment sexual harassment. Describe the facts of the case, and the decision the court came to in the case. Explain whether you think that case applies to Pollard's case (why or why not) and whether you would want to use this case in Teddy's favor or whether Pollard may use it in her favor. Include the citation to the case and a link to it online. (10 points) <http://www3.uakron.edu/lawrev/robert1.html>

In *Robinson v. Jacksonville Shipyards, Inc.*, a shipyard company employed a female welder who was continually subjected to nude and partially nude pictures posted by her male co-workers. 73 The men posted these pictures not only in common areas, but also in places where the victim would have to encounter them, including her tool box. 74 The men referred to the victim as "baby," "sugar," "momma," and "dear." 75 In addition, the men wrote obscene graffiti directed at the victim all over the plant. 76 The men also made numerous suggestive and offensive remarks to the victim concerning her body and the pictures posted on the walls. 77 The victim complained about this atmosphere of harassment on a number of occasions, but the company's supervisory personnel provided little or no assistance. 78 The <https://assignbuster.com/liability-in-workplace-essay-sample/>

court found this conduct violated Title VII because the plaintiff belonged to a protected category, was subject to unwelcome sexual harassment, the harassment was based on sex, it affected a term or condition of her employment, and the employer knew or should have known about the harassment and failed to take remedial action.

I think that Virginia Pollard could reference this case because her simulation was similar but not as extensive. Steve King, a warehouse supervisor of Teddy's Supplies, participated in the sing on the truck prank and even coaxed her into showing her bra by telling her that he wouldn't say anything to management if she took off her bra. Instead, Pollard walked away and then revealed the backside of her bra. Pollard was continually harassed by her six male colleagues who played pranks on her every day; and thus interfering with her job performance in several instances by trapping her in the guard shack and forcing her to hear the backfire of a forklift. C. Do you agree that Pollard was disparately treated? Why or why not? In your answer, define disparate treatment. (10 points.) Disparate treatment is intentional discrimination. Where employment decisions are motivated by race, color, sex, etc., disparate treatment exists. The key element needed to show disparate treatment is that members of a protected group are treated differently from non-members. A "but for" test is often applied. "But for" membership in a protected group, the employee would not have been the object of the adverse employment action. With disparate treatment, the motivating factor behind the employment action is the employee's membership in the protected group. <http://library.findlaw.com/2000/Aug/1/130670.html>

I believe that disparate treatment was involved in the Pollard case. Pollard wouldn't have been treated this way if she hadn't been an only female. In this situation, she had no defense against the men other than filing a complaint and/or notifying her supervisor. The sign on a truck prank that read "HARDHAT REQUIRED/BRA OPTIONAL" pretty much singles Pollard out as being mistreated due to her gender. She once complained to her supervisor, and he told her to "grow some balls and get over herself"; clearly a case of disparate treatment and sexual harassment. D. Does the existence of a sexual harassment policy provide a defense to Teddy's in this case? Why or why not? (Include the name and citation of at least two federal or state sexual harassment case(s) which provide precedential support to your defense statement.) (10 points.) No. I don't think there is an existing case that would provide a defense to Teddy's in this case.

The evidence presented against Teddy's Supplies is clear-cut, and the circumstances involved are in violation of Title VII. Steve King, one of Teddy's supervisors, was aware of the pranks that Pollard's six male colleagues were playing on her. None of these pranks and the conduct of her male colleagues was welcomed by Pollard, and these actions were severe enough "to alter the conditions of [the victim's] employment and create an abusive working environment." 60 In 1986, the U. S. Supreme Court, in *Meritor Savings Bank v. Vinson*, 57 (http://www. law. cornell. edu/supct/html/historics/USSC_CR_0477_0057_ZS. html) endorsed the notion of a hostile work environment. 58 Placing strong emphasis on EEOC guidelines, the Court held such sexual misconduct constitutes prohibited sexual harassment, even if it is not linked directly to the grant or denial of an

economic quid pro quo, where “ such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.” 59 This decision set the stage for a broader definition of sexual harassment. It also gave rise to a debate over two related issues: What degree of abuse is needed to constitute hostility that interferes unreasonably with a victim’s work performance, and what is the nature and extent of an employer’s liability for a hostile work environment.

What Is a Hostile Work Environment?

As part of its decision in *Meritor*, the Supreme Court stated that a hostile work environment constitutes grounds for an action only when the conduct is unwelcome, based on sex, and severe or pervasive enough “ to alter the conditions of [the victim’s] employment and create an abusive working environment.” 60 This standard raises numerous questions. What is unwelcome? When is conduct based on sex? Are employees allowed to flirt on the job anymore? Can they tell off-color jokes? What happens when someone gets offended? Who decides what is appropriate, and what is not? Should employees be required to tolerate some minimal level of offensive sexual behavior within the workplace? The EEOC itself has stated, “ Title VII does not proscribe all conduct of a sexual nature in the workplace.” 61 The line is drawn between acceptable sexual conduct and sexual harassment where the conduct becomes unwelcome.

However, as the courts continue to grapple with the definition of unwelcome sexual conduct, their decisions have not followed a predictable pattern. Nonetheless, the courts now grant relief for sexual harassment far more

often than they did initially. Today, courts will more likely find an illegal hostile environment present when the workplace includes sexual propositions, pornography, extremely vulgar language, sexual touching, degrading comments, or embarrassing questions or jokes. 64 The following cases illustrate conduct that creates a hostile work environment. (1) In *Hall v. Gus Construction Co.*, a construction company hired three women to work as “ flag persons” or traffic controllers at road construction sites. 65 Male co-workers immediately and continually subjected the women to outrageous verbal sexual abuse. One of the three women developed a skin reaction to the sun and the men nicknamed her “ Herpes.”

When the women returned to their car after work one day, they found obscenities written in the dust on their car. 67 Male co-workers continuously asked the woman if they wanted to engage in sexual intercourse or oral sex. 68 In addition to the verbal abuse, the women were constantly subjected to offensive and unwelcome physical contact. On one occasion, the men held up one of the female employees so that the driver of a truck could touch her. 69 The men subjected all three woman to other types of abuse, including “ mooning” them, showing them pornographic pictures, and urinating in their water bottles and automobile gas tanks. 70 The company’s supervisor was well aware of all of these activities. 71 The court found this conduct violated Title VII because it was unwelcome conduct of a sexual nature, even though it did not contain “ explicit sexual overtones.” 72 (2) In *Robinson v. Jacksonville Shipyards, Inc.*, a shipyard company employed a female welder who was continually subjected to nude and partially nude pictures posted by her male co-workers.

The men posted these pictures not only in common areas, but also in places where the victim would have to encounter them, including her tool box. 74 The men referred to the victim as “ baby,” “ sugar,” “ momma,” and “ dear.” 75 In addition, the men wrote obscene graffiti directed at the victim all over the plant. 76 The men also made numerous suggestive and offensive remarks to the victim concerning her body and the pictures posted on the walls. 77 The victim complained about this atmosphere of harassment on a number of occasions, but the company’s supervisory personnel provided little or no assistance. 78 The court found this conduct violated Title VII because the plaintiff belonged to a protected category, was subject to unwelcome sexual harassment, the harassment was based on sex, it affected a term or condition of her employment, and the employer knew or should have known about the harassment and failed to take remedial action. 79 3) In *Waltman v. International Paper Co.*, the harassment began when a co-worker broadcast over the company’s public address system obscenities about the female victim, who then received over thirty pornographic notes in her locker.

The men covered the walls of the facility and the elevator with pornographic pictures and crude remarks concerning the victim. 81 In addition, one of the victim’s supervisors told her that she should have sex with a certain co-worker; he also physically accosted her. 82 Another employee told the victim that “ he would cut off her left breast and shove it down her throat.” On another occasion, this same employee held the victim “ over a stairwell, more than thirty feet from the floor.” Other male employees also physically grabbed and pinched the victim.

The court found this conduct stated a claim of hostile environment discrimination under Title VII, because employees touched her in a sexual manner, directed sexual comments toward her, and continued to write sexual graffiti throughout the workplace. 85 Even though these examples involved blue collar workers, the problem of sexual harassment permeates all businesses and reaches upper management. 86 No company or supervisor can prudently ignore the problem. Another issue concerning hostile environment cases is whether a victim may only recover for sexual harassment aimed at the victim, or whether she may cite examples of sex-based conduct directed at other employees to establish her prima facie case. A number of courts have held that incidents involving employees other than the victim are relevant in establishing a generally hostile work environment. 87 <http://www3.uakron.edu/lawrev/robert1.html>

3. The CEO asks you to review the sexual harassment policy currently in place, which Virginia signed. He wants you to provide him with suggestions for change to it. Review the policy and give three recommendations for changes, enhancements and ideas for making the policy stronger. Include your reasons for these suggestions. If you find information online for making these changes, include citations and/or links to that information. Explain how your suggestions may have protected Teddy's in this case. Support these recommendations with current case law. (Points: 20)

1. It is my professional opinion that the sexual harassment form of Steve's Supplies should have a more concise scope of policy that goes into detail about company policy concerning sexual harassment.

Steve's Supplies current Scope of Policy on the sexual harassment form reads, " This policy prohibits any illegal discrimination or harassment of any employee by another employee, co-worker, supervisor, or vendor. All employees are entitled to a harassment and discrimination free environment. The company has a " zero-tolerance" policy with respect to harassment or discrimination. A safe work environment is the goal of Teddy's Supplies."

The following sexual harassment form is much more explanatory and leaves little room for miscomprehension. " The Company prohibits sexual harassment of its employees and applicants for employment by any employee, non-employee or applicant. Such conduct may result in disciplinary action up to and including discharge. This policy covers all employees. The Company will not tolerate, condone or allow sexual harassment, whether engaged in by fellow employees, supervisors, associates, clients or other non-employees who conduct business with the Company."

" Sexual harassment is any behavior that includes unwelcome sexual advances and other verbal or physical conduct of a sexual nature when:

- submission to, or rejection of, such conduct is used as the basis for promotions or other employment decisions;
- the conduct unreasonably interferes with an individual's job performance or creates an intimidating, hostile or offensive work environment."

“ No manager or supervisor shall threaten or imply that an employee’s refusal to submit to sexual advances will adversely affect that person’s employment, compensation, advancement, assigned duties, or any other term or condition of employment or career development. Sexual joking, lewd pictures and any conduct that tends to make employees of one gender “ sex objects” are prohibited.” .

<http://www.elinfonet.com/pickedpol/144.html>

This kind of introductory statement will help to set the precedence for how employee conduct regarding sexual harassment is handled by Teddy’s Supplies. A concise yet easily understandable definition of sexual harassment will help to protect Teddy’s from sexual harassment cases that could be avoided through employer discipline before getting into court. Teddy’s Supplies should have fired their supervisor, Steve King, for allowing his workers to play pranks involving sexual joking and lewd signs. If this had occurred, it might have been possible to come to a satisfactory agreement between the employer and employee before the case made it to court. Steve King clearly violated sexual harassment procedures when he told Pollard that he would make no complaints to management if she took off her bra. These kind of lewd comments are strictly against any sexual harassment policies as set forth by the federal government.

2. It is my opinion that the sexual harassment policy of Teddy’s Supplies needs some revisions that will help to protect the company as well as its employees. I have included some recommendations and suggestions for enhancing the current policy.

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“ Employees who have complaints of sexual harassment should (and are encouraged to) report such complaints to their supervisor. If this person is the cause of the offending conduct, the employee may report this matter directly to [specify various officials, (e. g., Director of Human Resources, designated Vice Presidents, President, etc.]. Your complaint will be promptly and thoroughly investigated. Confidentiality of reports and investigations of sexual harassment will be maintained to the greatest extent possible. Any manager, supervisor, or employee who, after appropriate investigation, is found to have engaged in sexual harassment of another employee or tutor will be subject to disciplinary action, up to and including discharge.”

<http://www.elinfonet.com/pickedpol/144.html>

Responsibility and Reporting Structure:

In the event that the employee cannot file a complaint on the online website, then the employee(s) are obligated to first call the technical support telephone hotline number at the bottom of the sexual harassment form. This number will allow the employee to talk with a help desk operator who can transfer him/her to the appropriate technician for help. In the event that the problem can't be resolved on a timely basis, the technician will give the employee a ticket no. and an approximate time to try to file the online complaint again. In this situation, the employee is encouraged to immediately report the complaint to the Director of Human Resources, Vice President of Operations, the CEO, or any personnel in the office of Human Resources. Failure to do so will result in not providing the employee(s) with any protection under the law. This revision will help to protect the employer

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in cases where proper reporting procedures are not adhered to by the employee (complainant).

3. The current sexual harassment form of Teddy's Supplies needs a Policy Commentary Section that maintains strong policy prohibiting sexual harassment.

“ It is imperative that employers establish and maintain a strong policy prohibiting sexual harassment. Under the recent United States Supreme Court decisions in Burlington Industries, Inc. v. Ellerth and Faragher v. City of Boca Raton, (<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=524&invol=775>) an employer may successfully defend against a supervisor's sexual harassment if it can demonstrate that:

(i) it exercised reasonable care to prevent and promptly correct the harassing conduct; and

(ii) the employee unreasonably failed to take advantage of preventative or corrective opportunities.

Obviously, to establish the second prong of the defense, the employer must prove that the complaining employee knew of preventative or corrective opportunities, such as a complaint procedure contained in anti-harassment policy. Generally, the employee manual is the main vehicle by which the employer disseminates its anti-harassment policy, and, therefore, an employee manual that does not contain a sexual harassment policy does an employer a disservice.”

<http://www.elinfonet.com/pickedpol/144.html>

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There should be specific procedures in place that employees should be aware of at the time of hire. Specific procedures are referred to as a section in the employee handbook that provides a strong statement regarding sexual harassment procedures that will not be tolerated in any shape, form, or fashion. This manual, along with a sexual harassment policy, will be provided to the employee on the same day of hire. A form will be provided to the employee requiring his/her signature stating familiarization with all employer rules and regulations.

4. How would Pollard's case be impacted if her replacement had been a female? Would her case be different? Would her damages be different?

Explain your answer. (Points: 10)

If Pollard had been replaced by a female, I think she would have a good chance of suing Teddy's Supplies for a substantial amount of money. The fact that a woman was hired as a replacement would pretty much reveal to the court that Pollard may have been the victim of sexual harassment as a method of making her quit her job. I think the courts would have ruled that Teddy's Supplies was indeed guilty of sexual and hostile environment harassment. With this case scenario, the case would have likely never made it to the appeals process due to the underlying circumstances involved. I think that in this situation Pollard would be awarded back wages and punitive damages.