

# Company's 'head in the sand' response racks up punitive damages

Faced with a bad situation, Wax Works record stores managed to make it even worse, and paid a big price.

One of Wax Works' store managers, Kerry Ogden, had compiled an excellent record. But her supervisor made numerous unwelcome physical advances. When she rebuffed him, the supervisor retaliated by mistreating her and holding up her annual raise.

Ogden complained to the company's regional manager. It could have stopped there, but it didn't. The regional manager was aware of the supervisor's actions, but he told Ogden that he viewed the supervisor as an "asset." The supervisor wasn't disciplined and nothing was placed in his personnel file. The regional manager refused to discuss Ogden's complaints with her over the phone, and a vice president at company headquarters didn't return two calls she made to discuss the situation.

She received treatment for depression and was essentially forced to resign. She sued, citing a hostile environment, quid pro quo harassment and retaliation. A jury awarded her \$186,000 in back pay and compensatory damages. The kicker: The jury tacked on an extra \$500,000 in punitive damages, which was later reduced to \$260,000. (Ogden v. Wax Works, No. 99-1643, 8th Cir., 2000)

Advice: This is a classic lesson in how not to respond to a sexual harassment complaint. No employee is so valuable that a company should ignore its obligation to provide a workplace free of harassment.

The case also reminds employers that they can get hit with punitive damages. Last year's U.S. Supreme Court decision in *Kolstad v. American Dental Association* showed that workers are entitled to punitive damages when the employer has intentionally discriminated and done so with "malice or reckless indifference."

Kolstad also established that a company can defend itself by showing a "good-faith effort" to prevent harassment. In this case, Wax Works' lack of any effort and its knowledge of the harasser's past made the company liable for a big punitive damage award. Wax Works' written policy promised a "thorough investigation" of harassment complaints and "appropriate action," but the company's lack of follow-through sealed its fate.