

Personal liability for rehiring harasser

Here's an important message for employers that may be considering rehiring someone who was fired after being accused of sexual harassment: There could be severe consequences, including, under Pennsylvania law, potential personal liability for the individual responsible for the rehiring decision.

Recent case: Back in 2015, Lauren, who worked as an auto salesperson, went on a work-related trip to Las Vegas. There, she alleged, a co-worker drugged and sexually assaulted her. The employer investigated, concluded she had been sexually assaulted and gave the co-worker the option to resign or be fired. He resigned.

In late 2016, management told Lauren that the man was being rehired. She protested, claiming emotional distress at the thought of working with him again. Management gave her the option of transferring to another location, quitting, taking a lower-paying job or toughing it out.

Then she was transferred—the company's remedy for the alleged sexually hostile environment Lauren claimed the rehiring decision created.

Lauren sued anyway, claiming a sexually hostile work environment.

The court agreed. It also said that under the Pennsylvania Human Rights Act, the company owner who made the rehiring decision could be held personally liable for aiding and abetting sexual harassment.

In addition, Lauren alleged that she was retaliated against when she was transferred after she complained about the co-worker's presence. The court agreed that the transfer in response to her complaint was retaliation. (*Connors v. Shorkey Family Auto*, WD PA, 2018)

Final note: The #MeToo movement has made it impossible for employers to look the other way when an employee claims sexual harassment.

As always, a thorough and neutral investigation should precede any disciplinary action, since undoing that action can create its own unintended consequences.