

Employers must stop customer harassment, too



Just as employers have an obligation to address sexual harassment by co-workers or supervisors, they must also prevent and stop harassment by customers.

For example, the case law is clear that when a customer harasses a waitress in a restaurant or casino and the employer does nothing to stop that harassment, the employer is liable.

There are a few workplace scenarios in which the nature of the job makes it more likely that sexual harassment may occur. Prisons, hospitals and nursing homes fall into this category. But even then, once an employer knows harassment is happening, it has an obligation to stop it.

Recent case: Kymberli worked as a certified nursing assistant at the Plaza Community Living Center, an assisted-living facility.

She claimed that an elderly resident named J.S. had a reputation for groping female employees and becoming physically aggressive when reprimanded. Management received regular complaints about J.S. from his caregivers, but nothing ever happened. Kymberli claimed, for example, that he physically grabbed her every day, making sexual comments and demands.

On the day that ultimately resulted in Kymberli's discharge, J.S. repeatedly grabbed at her breast and punched her. He also grabbed her genitals. She told management she would no longer work with the patient. Her supervisor allegedly laughed and refused to change her patient roster. Instead, Kymberli was sent home.

She spent three months on workers' compensation leave. When she returned to work, she was terminated. She sued.

The trial court dismissed her case, reasoning that sexual harassment in a medical facility was different than in other workplace environments. But the 5th Circuit Court of Appeals reinstated her lawsuit, noting that management clearly knew about the threat of harassment and did nothing about it. (*Gardner v. Plaza*

Community Living Center, 5th Cir., 2018)