

From the courtroom: Sexual discrimination defined by real-life cases

Here's a new worry, courtesy of the 4th Circuit Court of Appeals: Allowing—or worse yet participating in—rumors that a female employee is allegedly “sleeping with the boss” to get ahead may trigger a sex discrimination lawsuit under Title VII of the Civil Rights Act.

The case is the first federal appeals court ruling to equate such rumor-mongering with sex discrimination.

Recent case: Evangeline worked for Reema Consulting in its Virginia warehouse. She started as a clerk, but in two years, she received six promotions. She ultimately became assistant operations manager of the facility.

About two weeks after assuming that position, she learned that some male employees were circulating “an unfounded, sexually explicit rumor” that “falsely and maliciously portrayed her as having had a sexual relationship” with a higher-ranking manager in order to obtain the management position.

Evangeline believed the rumor started with a male co-worker who was jealous of her success.

To make matters worse, she claimed the highest-ranking manager at the facility participated in spreading the rumor, including asking the alleged paramour whether his wife was ready to leave him over the alleged affair.

Evangeline complained to HR about the harassment. Then she found herself the target of accusations that she was harassing other employees. Reema Consulting fired her. She sued, alleging sex discrimination.

The trial court dismissed the case, but the 4th Circuit reversed.

It summarized the alleged rumor: That Evangeline, a female subordinate, had sex with her male superior to obtain a promotion, implying that she used her “womanhood, rather than merit, to obtain from a man, so seduced, a promotion.” The court said that narrative traded in a deeply rooted perception that women use sex to achieve success. And that, according to the court, was discrimination based on sex. (*Parker v. Reema Consulting*, 4th Cir., 2019)

Advice: Remind managers, no salacious rumors allowed.

Beware sexist slights, which can quickly add up to a hostile work environment

It used to be easy for employers to brush off occasional sexist comments. That's not the case anymore, as the #MeToo movement has raised awareness of the pervasiveness of sexual harassment and sexist attitudes.

Courts are becoming more sensitive to claims that what some may have long considered “harmless” behavior has a real effect on women's careers and can create a sexually hostile work environment.

If you haven't recently reviewed your sexual harassment policies and practices, now is a good time to do so. Make sure every complaint you receive gets an immediate and thorough investigation. Otherwise, you may find

yourself on the losing end of a hostile work environment case like this recent one.

Recent case: Lorena went to work for the Federal Bureau of Prisons in 2001. She was promoted to the Special Investigative Support Unit, which investigated criminal conduct within the prison where she worked. She excelled at the job.

At the same time, Lorena was working toward her nursing degree, with the goal of moving into the bureau's health care administration unit.

Then Lorena got a new supervisor who was close friends with the new prison warden. Both were men. Lorena claimed that as soon as the two arrived on board, things changed dramatically.

She claimed that during their tenure, female employees were systematically undermined unless they dressed provocatively, slept with male staff members or acquiesced to stereotypical female roles and duties. For example, she claimed that her supervisor made gender-based comments about her, including telling her that she should be a secretary, coffee-maker and maid. He called his male subordinates his sons.

Once, after noticing a photo of Lorena's husband, he questioned her taste in men and commented that she "must have never had a Texas Long Horn." He followed this up by calling her a "fat cow." He also ordered her to clean her male co-workers' offices. He frequently refused to acknowledge her presence by turning his back to her.

When she complained about his behavior—and especially the "Texas Long Horn" comment to other supervisors—he changed her schedule to make it harder for her to complete classes for her nursing degree.

Finally, Lorena quit and sued, alleging a hostile work environment and retaliation.

The Federal Bureau of Prisons tried to argue that, at most, this was just a case of a few isolated incidents of sexist comments. It said they weren't severe enough to create a sexually hostile work environment that would make a reasonable worker decide to quit.

The court disagreed and said Lorena's lawsuit could proceed. (*Guthrie v. Hurwitz*, ED CA, 2018)

Final note: It may not be enough to respond to complaints. If your workplace is permeated with sexism, it may take changing the culture entirely.

The EEOC has extensive information on how employers can tackle the tough task of changing corporate culture, including tips for getting upper-level management buy-in. The EEOC has listed eradicating sexual harassment in the workplace as one of its top enforcement goals and has been filing multiple sexual harassment lawsuits.

Online resource Find EEOC resources on preventing sexual harassment at www.eeoc.gov/eeoc/task_force/harassment/resources.cfm.

Sexual harasser can't claim accusation is sex bias

An alleged sexual harasser recently tried to argue that the very fact that he was accused made him a victim of sex discrimination. It didn't work.

Recent case: Shaun worked as a product demonstrator who was often assigned to Wegmans grocery stores. He claimed he was disabled. Shaun alleged that Wegmans ordered his employer not to assign him to demonstrate products in its stores because of several medical incidents that occurred while he was working there.

Wegmans countered that Shaun had really been barred because he had made sexually oriented comments to a

Wegmans employee in a store restroom.

Shaun then added sex discrimination to his disability discrimination claim, arguing he had been falsely accused of sexual harassment. This, he said, was discrimination on the basis of sex.

The court disagreed and dismissed his lawsuit. It reasoned that “courts have consistently held that an allegation of being falsely accused of sexual misconduct alone does not establish a claim for sex discrimination under Title VII.” (Garvey v. Wegmans, ND NY 2018)

Note: Employers that conduct fair, impartial harassment investigations have little to fear, even if it turns out that their conclusions about what happened were, in fact, wrong. To courts, good faith carries great weight.