

Update on the Law: Illinois Imposes Strict Liability for Sexual Harassment by any Supervisor

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Ms. Scharf and Ms. Marmor, resident in the Chicago office, represent corporations in complex litigation, including commercial, tort and employment defense. Here, they describe the Illinois Supreme Court's new decision about sexual harassment, which presents challenges for any employer based in Illinois or with Illinois employees.

In an unusual departure from federal law, and from virtually every other state's law, the Illinois Supreme Court decided on April 16, 2009, that an employer can be strictly liable for "hostile environment" sexual harassment committed by a supervisor, even one who has no supervisory authority over the plaintiff and no ability to influence the plaintiff's terms and conditions of employment. *Sangamon County Sheriff's Department v. Illinois Human Rights Commission*, _N.E. 2d_ (2009 WL 1011986).

The Sangamon County Opinion

The case arose from sexual harassment claims brought by a female records clerk employed by a county sheriff's department. The harasser was a male supervisor who did not supervise the plaintiff and worked in a separate division of the sheriff's department. The initial harassment consisted of an invitation to a bar, supposedly along with many other employees although it turns out they were not invited; a forced kiss on the drive home from the bar; an uninvited visit to the plaintiff's home; and an invitation to go to a motel for the night.

The plaintiff at the time did not report these events to the sheriff's department or any of her supervisors. A few months later, the plaintiff received a harassing letter that was traced to the same supervisor. The sheriff advised the supervisor not to have any contact with the plaintiff, gave the supervisor a 4-day suspension, and warned that any further actions would result in a harsher penalty including possible termination.

The plaintiff later filed charges of sexual harassment against the sheriff's department in the Illinois Human Rights Commission. The Commission concluded that there had been sexual harassment based on a hostile

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the misconduct because the harasser was a supervisory employee. 775 ILCS 5/2-102(D) (West 1998). The Illinois Court of Appeals reversed, finding that the employer was not liable because a supervisor with no oversight of the plaintiff was simply a co-employee for purposes of sexual harassment claims and the employer took reasonable corrective measures upon learning of the harassment.

The Illinois Supreme Court reversed, and reinstated the finding of liability against the employer. Limiting language in the Act -- that an employer shall be responsible for sexual harassment by nonemployees or nonsupervisory employees only if the employer is aware of the conduct and fails to take reasonable corrective measures -- did not apply because the harassing supervisor was "neither a 'nonemployee' nor a 'nonmanagerial or nonsupervisory employee.'" The court also grounded its decision in public policy, noting that there is sufficient identity between employer and supervisor to presume that an employer has notice of sexual harassment by a supervisor and, since such managerial personnel are the "public face" of the employer, to hold an employer strictly liable for sexual harassment by its supervisory employees. The court also indicated that a liberal reading of the statute "insures that victims have full incentive to report harassment," especially when confronted with supervisors who are "better connected and have greater job security."

Implications for Employers

Sangamon County greatly broadens the type of sexual harassment claim for which companies may be found liable. Companies that are either headquartered in Illinois or have Illinois operations are within the reach of the Illinois Human Rights Act. On that basis, *Sangamon County* invites more sexual harassment filings under the Illinois Human Rights Act, either in tandem with or in place of claims under Title VII. We also expect that plaintiffs will try to broaden the reach of *Sangamon County* to encompass other forms of discrimination, not just sexual harassment. Another possible consequence is that plaintiffs may more frequently choose to file sexual harassment claims under the Illinois State Court, where a judge may be expected to adhere more assiduously to an Illinois Supreme Court decision construing an Illinois statute.

As a practical matter, training against sexual harassment should now expressly encompass the *Sangamon County* lesson. When a supervisor harasses *any* employee - whether the harassed employee is a direct supervisee or not - the employer may be held liable for sexual harassment even though it acted promptly and properly to sanction the offending supervisor and prevent any other misconduct.

Members of the Firm's [Employment Practice](#) are available to answer your questions and to assist in developing appropriate training programs.

For further information, please contact [Stephanie A. Scharf](#), [Sarah R. Marmor](#) or [Beth L. Kaufman](#).

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