



## ASAPs

### Midwest

#### Illinois Supreme Court Applies Strict Liability to All Workplace Sexual Harassment By Supervisors

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On April 16, 2009, the Illinois Supreme Court issued its decision in *Sangamon County Sheriff's Department v. Illinois Human Rights Commission*, Nos. 105517, 105518 cons. The court decided, by a 4-2 margin with one justice abstaining, that an Illinois employer is strictly liable for sexual harassment committed by any supervisory or management employee, even where the harasser had no supervisory authority over the complainant and had no authority to affect the terms and conditions of the complainant's employment.

#### The Facts in *Sangamon County*

Donna Feleccia was a records clerk with the Sangamon County Sheriff's Department. Sangamon County is located in the heart of Illinois, and includes the state capitol, Springfield.

Ron Yanor was a patrol division sergeant in the Sheriff's Department. He was a supervisor, but he was not Feleccia's supervisor. Yanor and Feleccia worked in different divisions of the Sheriff's Department, and Yanor had no supervisory authority over Feleccia. The two worked on different shifts that only overlapped between 2:30 and 5:30 PM.

Feleccia had been working for the Sheriff's Department for six years when the first incidents of sexual harassment by Yanor took place. These events included: an invitation by Yanor to take her to a bar that he told her would be attended by others in the Department but was not; a forced kiss when he drove her home from that bar; an unexpected appearance at her home to give her a Christmas cup filled with candies; and an encounter where Yanor asked Feleccia if she would like to go to a hotel with him for the night. All of these events allegedly occurred in a two-month time period in November and December of 1998. Feleccia did not report any of these events to the Sheriff's Department's other management.

A few months later, on February 5, 1999, Feleccia received a fake letter on Illinois Department of Public Health letterhead informing her that she had been exposed to a sexually transmitted disease. The letter was determined to be a hoax and was eventually traced to Yanor, who confessed, claiming that he did it as a practical joke. Shortly thereafter, the Sheriff's Department gave Yanor a four-day suspension and a letter of reprimand.

Feleccia was unhappy with the action the Department had taken. At that point, she told higher-level officials in the Sheriff's Department about the prior incidents of sexual harassment by Yanor. Feleccia eventually filed a charge of sexual harassment and retaliation with the Illinois Human Rights Commission (IHRC) against the Sheriff's Department and Yanor.

The IHRC found that Feleccia had established sexual harassment based on a hostile work environment. The IHRC found as a matter of law that the Sheriff's Department was strictly liable for Yanor's harassment of Feleccia because he was a supervisory employee, even though he was not Feleccia's supervisor.

The Illinois Court of Appeals reversed, finding that Yanor was merely a co-employee of Feleccia since he had no supervisory authority over her. Having found that Yanor was a co-employee, the appellate court found that the Sheriff's Department was not liable because it took reasonable corrective measures upon learning of the harassment when it suspended Yanor for four days without pay and issued a letter of reprimand.

#### The Illinois Supreme Court Decision

The Illinois Supreme Court founded its decision on the language of the sexual harassment provision in the Illinois Human Rights Act. The first clause of that statute in section 2-102(D) prohibits sexual harassment broadly. The second clause then limits the first clause by stating that "an employer shall be responsible for sexual harassment of the employer's employees by nonemployees or nonmanagerial and nonsupervisory employees only if the employer becomes aware of the conduct and fails to take reasonable corrective measures."

The *Sangamon County* majority held that: "[w]here the offending employee is either a 'nonemployee' or 'nonmanagerial or nonsupervisory employee,' an employer is responsible for the harassment only if it was aware of the conduct and failed to take corrective measures." The court found that the facts of the case did not fall within the limitation of the second clause of the statute because Yanor was "neither a 'nonemployee' nor a 'nonmanagerial or nonsupervisory employee.'" Thus, the Sherriff's Department was liable for Yanor's sexual harassment regardless of whether it knew about it, and regardless of whether it took reasonable steps once it found out.

The *Sangamon County* majority defended its position based on the language of the statute, which it deemed unambiguous. In addition, the court noted that it was not unfair to hold employers strictly responsible for sexual harassment by supervisory employees. The majority based this fairness point on the fact that supervisors are the "public face" of the employer and are in the best position to train supervisors and make them aware of the law prohibiting sexual harassment. The majority also defended its ruling on the basis that it would further the purposes of the Act by helping to prevent sexual harassment in employment for all individuals.

### **The Significance of *Sangamon County***

The significance of *Sangamon County* is that it marks a widening of the differences between Illinois and federal law regarding employer liability for supervisor harassment. Under Title VII, an employer is strictly liable (subject to certain defenses) for a supervisor's hostile environment harassment where the harasser has immediate or higher authority over the complainant. In light of *Sangamon County*, Illinois complainants bringing charges or suing under the Illinois Human Rights Act no longer need to worry about that distinction. Under *Sangamon County*, an Illinois employer is strictly liable for harassment perpetrated by its supervisory employees, regardless of whether the harasser has any authority over the complainant, regardless of whether the employer knew of the harassment, and regardless of what action the employer took if or when it found out. As Judge Karameier noted in his dissent in *Sangamon County*, this standard of liability not only departs from the federal law, but is without precedent anywhere in the United States.

In the past, in an effort to decrease employer liability, we have advised employers to provide anti-harassment training for all of their supervisors. After *Sangamon County*, employers should continue training all of their supervisors on harassment, including what it is, and how to prevent it. Those supervisors have always had the power to subject the employer to strict liability for harassment of their subordinates. *Sangamon County* makes it clear that these supervisors also have the same power to bind their employer as they interact with employees supervised by others.

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