

HARASSMENT AND RETALIATION CASES

**Drew Bracken
Ahlers & Cooney P.C.
100 Court Avenue, Suite 600
Des Moines, Iowa 50309**

1. Female college student alleges sexual harassment by the staff and students at a technical college.

She also claims that the deliberate indifference of the staff created an intimidating and hostile school environment.

However, the student did not show the staff was on notice of the alleged harassment, and she did not make any specific allegations about who harassed her, what the harassment entailed, or how the alleged harassment was because of her sex.

Is there liability?

No, the college student's claims were dismissed.

Sarver v. Jackson, 2009 WL 2776469 (11th Cir. 2009).

2. Male state university professor fired. He challenged his termination by the university as a breach of his employment agreement.

A female student who was enrolled in one of the professor's classes filed a complaint alleging that he had discriminated against her based on gender, sexual harassment, and retaliation.

Among other actions, the professor responded to a newspaper article critical of him by writing a letter to the editor which stated in part:

- "By the way, have you ever noticed that almost all women who claim to have been sexually harassed are physically ugly? I guess they just need to deny their lack of attractiveness to the opposite sex, and to use this method to get the attention and money they cannot otherwise command."

Ruling: For the University. The employment agreement clearly permitted the university to terminate the professor's employment for his repeated violations of the university ethics code.

Trustees of Indiana Univ. v. Cohen, 910 N.E.2d 251 (Ind. 2009).

3. Senior female private university professor sues a junior female colleague for filing a sexual harassment complaint against her.

The senior professor's emails to the new colleague formed the basis of the younger colleague's complaint.

One of the emails reads in part:

"Of course, I haven't erased your voice from my answering machine. It makes me happy and I love it. I'll leave it there a few days. I just feel like it. I'm trying hard not to call you . . . but I won't do it because I don't want to take advantage of you."

"You don't understand because you see me like some nice person who tortures you with emails and who you will work with, you are kind, polite, etc. but for me it is different, Michelle, I feel so much for you, don't you notice? Don't you see that I talk to you not just to pass the time, but rather because it makes me happy? Let's see if some day you have half of the affection that I feel for you."

Another email said, "Have you heard of a drug called 'Michelle,' I have an addiction to it now."

The professor was placed on probation by the university, ordered to have no contact with the colleague, and required to attend counseling. The professor sued the colleague for tortious interference with a business relationship.

Is there liability?

No, the court found the colleague's sexual harassment complaint against the professor was justified as providing truthful information to the university and there was insufficient evidence to show the complaint was motivated by actual malice.

Recio v. Evers, 771 N.W.2d 121 (Neb. 2009).

4. White female dean of fiscal affairs and her white female assistant sued state technical college, its African-American male president, and the African-American dean of students alleging that they were subjected to sexual and racial harassment and discrimination.

To establish a hostile work environment claim, the employees needed to show that:

- 1) they belong to a protected group;
- 2) they were subject to unwelcome harassment;
- 3) the harassment was based on their status;
- 4) the harassment was sufficiently severe or pervasive to alter the terms and conditions of employment and create a discriminatorily abusive working environment;

As for the harassment, the employees complained that the president had a loud management style, although he yells at both males and females.

The employees also complained that their turbulent working environment was the result of a personality clash with the president. The

another email said, "Have you heard of a drug called 'Michelle,' I have an addiction to it now.

employees further complained about several inappropriate comments made by the president, which were found not to be sufficiently serious to alter the terms and conditions of their employment.

Is there liability?

No, the court entered summary judgment in favor of the defendants on the harassment claims. *Givens v. Chambers*, 548 F. Supp. 2d 1259 (M.D. Ala. 2008).

5. Female university visiting assistant professor sues university under Title VII, alleging gender discrimination, sexual harassment, and retaliation. She alleges that her supervisor, the chair of the department, sexually harassed her.

The assistant professor complains of harassment by her supervisor consisting of suggestive remarks (such as calling her "honey" and "babe," and stating, "I wouldn't mind watching a movie in bed with you") and provocative touching (rubbing her thigh and hand).

The assistant professor applied for an open tenure-track position, which was considered by a committee headed by the supervisor, and the professor was not selected for the promotion. There is no evidence that the supervisor had any influence over the committee's decision to not recommend the professor for the job, and the final selection of the candidate was not made by the supervisor.

The professor alleges that the supervisor began to treat her unfavorably after she rejected her supervisor's sexual advances, such as by excluding her from departmental meetings, cancelling some of her classes, and refusing to give her desired class assignments.

The professor was eventually informed the university would not renew her contract and that it was downgrading a related advisor position that she held.

To establish a claim of "quid pro quo" harassment, such as the failure to promote, the professor needed to show that:

1) she suffered a tangible employment action; and

2) that action resulted from her acceptance or rejection of her supervisor's alleged sexual advances.

The professor further alleged that the university retaliated against her, which required her to show:

- 1) she engaged in statutorily protected activity;
- 2) she suffered an adverse employment action;
and
- 3) there was a causal link between the protected activity and the adverse employment action.

Is there liability?

No, the court affirmed the entry of summary judgment in favor of the university on the sexual harassment and retaliation claims.

Russell v. Univ. of Tex., 234 Fed. Appx. 195 (5th Cir. 2007).

6. EEOC sues university claiming that male campus director sexually harassed female clerical employee.

Employee informed her supervisors about the constant and inappropriate attention the director gave her. The supervisors did not report the alleged harassment to the human resources department because they were not sure if the conduct constituted a violation of the university's policies.

The director called her and came by her cubicle excessively, asked her personal questions, asked her if she liked to "party" (which he told her meant to kiss and have sex), asked her if she thought he was good-looking, offered to pay for a hotel room, demeaned women continuously, asked her when she was going to give in, ran his fingers through her hair, and tried to kiss her.

The employee alleged a hostile work environment claim.

The employee also claimed that the university never investigated her specific allegations of sexual harassment.

There is evidence that university supervisors and employees did not take sexual harassment training seriously and that it was ineffective.

The employee also alleged a claim of quid pro quo harassment and that the director retaliated against her for refusing his advances because she was not selected for an open position at the university, over which the director had the final say, and she refused a request by the director to "party" the day before the filling of the position was announced.

Is there liability?

Possibly, the University asked that the case be dismissed, but the court found that trial was necessary on the sexual harassment and retaliation claims. *EEOC v. Univ. of Phoenix, Inc.*, 505 F. Supp. 2d 1045 (D. New Mex. 2007).