

Louisiana Employment Law Letter

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Highlights

- Employer gets egg on its face from protecting golden goose
- Police department scammed by the fuzz?
- Outrageous! Or not?
- Seaman's discrimination case sinks
- How one employer learned the ABCs of ULPs
- Unique company program held lawful

SEXUAL HARASSMENT

Employer gets egg on its face from protecting golden goose

We all have those "golden geese" -- those top producers, "superstar" employees, and indispensable individuals who bring your business fame, respect, and profits. So what do you do when that "golden goose" is accused of sexual harassment? You look the other way and hope it's not true, right? Wrong. A recent decision from the U.S. Fifth Circuit Court of Appeals (which covers Louisiana) reaffirms what we've been telling you all along: Treat your employees equally and treat all allegations of sexual harassment seriously -- or you're going to be the one with egg on your face.

Golden goose

Dr. Raul Caffese was the head of the periodontics department at a university medical center. He was considered to be among the top 10 most famous academic periodontists in the world. He even had an endowed professorship named after him, and because of his esteemed position, he enjoyed a great deal of power in his department and throughout the university.

Golden goose lays an egg

Caffese began supervising Dr. Luis F. Mota, a resident alien and visiting professor who came to study periodontics under the doctor. Mota, however, was unprepared for this particular "course of study." While at a conference, Caffese sexually propositioned him and allegedly threatened to affect his immigration status if he refused to comply. During the next few conferences, the doctor continued making sexual advances toward him. When he refused to share a room with

Caffese at one of the conferences, the doctor allegedly told him he could not work in the department if he continued to reject him. At another conference, the doctor allegedly claimed the university would protect him, as it had in the past, if Mota pursued any type of complaint against him. To make sure he got the picture, Caffese allegedly added that he had "helped" other people at the school to leave when he didn't like them.

About eight months after one of those "educational" conferences, Mota submitted a detailed, written harassment complaint against Caffese to the university. The investigatory panel assigned to address the complaint did not include anyone with past dealings with Caffese or anyone from the university's medical or dental school.

Employer builds a golden cage

The investigatory panel concluded it was unable to determine whether Caffese had violated the university's sexual harassment policy -- despite the fact that he confessed to sexually propositioning Mota. Days after the panel notified Mota of its decision, he requested protection against further harassment and retaliation by the doctor. In response, the university told both doctors to work it out themselves so they could continue working in the department.

And the golden goose waddles right out of it

Caffese and the university chose to "work things out" by:

1. allowing Caffese to arrange Mota's schedule so the two were in *constant contact*;
2. *denying* Mota a stipend he had previously received;
3. *denying* Mota's request for a paid six-month leave of absence to address mental and physical problems allegedly brought on by the harassment;
4. *refusing* to allow Mota access to his office while he was taking unpaid leave;
5. *refusing* to allow Mota to serve on various boards and teach in Spain; and
6. *denying* Mota's request for an additional six months of unpaid personal leave.

To top it off, when Mota did not return to work after his leave (could you blame him?), the university *fired* him. He then sued Caffese and the university.

Employer is left with egg on its face

Caffese wisely settled with Mota by agreeing to pay him \$290,000. So the university was left to defend itself alone to the jury. After all the evidence was in -- surprise, surprise -- the jury found Mota had been sexually harassed by Caffese and retaliated against by the university and the doctor for his complaints of sexual harassment. The jury also found the university gave "golden" treatment to Caffese because it had reprimanded other supervisors just for having *consensual* relationships with subordinates. Although he agreed to pay Mota \$290,000, the doctor actually got off cheap since the jury hit the university for nearly \$850,000. The jury's verdict was affirmed by the Fifth Circuit in New Orleans, which reduced the award only slightly. *Mota v.*

The University of Texas Houston Health Science Center, 2001 U.S. App. LEXIS 17877 (5th Cir. Aug. 9, 2001).

How you can avoid getting goosed

So what can you do to avoid this kind of disaster? Most of it is pretty obvious, but let's cover the bases:

- Make sure your investigation is impartial. If the alleged harasser confesses or the evidence shows he did it, he needs to be disciplined, no matter how important he is to your company.
- Make sure your discipline is sufficient to deter future misconduct. And make sure you discipline similarly situated employees the same way. You don't have to fire every employee accused of harassment, but the discipline has to be "reasonably calculated" to prevent further harassment. In other words, the punishment should fit both the crime and the circumstances. For example, for a first offense that's not too egregious, a written warning is usually sufficient. But for really egregious or repeated harassment, a suspension or even discharge may be appropriate.
- Make sure an employee who complains is not treated differently after complaining. In this case, the evidence showed the university allowed other people to take leave, serve on boards, and teach seminars. The jury believed the university denied those privileges to Mota because he had complained.

Remember, you must take all allegations of sexual harassment seriously -- no matter whether the accused harasser is the lowest employee or the president of the company. When you start giving special treatment to your "golden geese," odds are there will be no "sunny side up" for you.

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