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With Sexual-Harassment Ruling, State Enhances Its Workers'-Rights Image

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If you're a target of sexual harassment at work, there's at least a little bit of good news: In trend-setting California, it may be getting easier to sue your employer for damages.

That's due to a state Court of Appeal decision this month that narrows the ability of employers to use the common legal defense that they aren't responsible for everything, including some of the harassment, that occurs in their workplaces.

The decision maintains California's tradition of being more protective of workers' rights in employment disputes--and tougher on employers--than the rest of the country. It also comes as the U.S. Supreme Court is considering cases that could redefine employers' more limited liability under federal law for sexual harassment in the workplace.

California's appellate court ruling, closely scrutinized in legal circles and likely to be reviewed by the state Supreme Court, stems from a sexual harassment lawsuit filed in 1990 by two female insurance agents at the Alhambra office of Prudential Insurance Co. They said their sales manager forced them to have sex or sexual contact with him.

Prudential argued that it responded swiftly. Earlier that year, a week after the women filed a complaint with the company, Prudential dismissed the sales manager after conducting an internal investigation. He later was allowed to resign instead, but he never returned to work.

A Los Angeles County Superior Court judge eventually dismissed the case against the company, finding that the sales manager--despite his title--was not legally a supervisor and instead was a co-worker of the women.

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That distinction was crucial because an employer is liable for sexual harassment by a co-worker under California law only if the company knew, or should have known, about the harassment and failed to take immediate action. On the other hand, a company is liable for harassment by a supervisor even if the problem never was reported to mid- or upper-level management.

But in its ruling earlier this month, the Court of Appeal in Los Angeles reinstated the case against Prudential. In doing so, it issued a broad definition of "supervisor," saying it includes anyone "in the chain of command over an employee" who "has sufficient actual or reasonably perceived power or control or direction in the work environment to significantly affect any employee's employment status." The court said that such criteria as whether the person in question can discipline or train an employee should be taken into account in determining whether he or she is a supervisor.

The decision, unless reversed on appeal, means that "employers will have to take sexual harassment much more seriously," said Carla Barboza, a Los Angeles lawyer representing the two women. "And, hopefully, women and men will be safer in the workplace because you can't escape liability now by claiming that someone is just a co-worker" when he or she actually has supervisory authority.

Encino employment lawyer Joseph Posner added, "Companies will have to be more sensitive to how the rank and file is being treated by first- and second-level supervisors."

Paul Grossman, a Los Angeles management lawyer who filed a brief in support of Prudential, called the ruling counterproductive.

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Grossman, general counsel for a group of major companies called the California Employment Law Council, offered a hypothetical example of a woman harassed by a low-level supervisor. "If she calls up the human resources department, the harassment will immediately end, but she'll get nothing other than an end to the harassment. But if she endures it for a while and then sues, she'll get rich, even though the company knew nothing about it."

Regardless of how sympathetic California courts may be toward sexual harassment plaintiffs, lawyers who represent workers say it's sometimes wiser to find a new job than to file a complaint against your boss or to take your employer to court. Retaliation against those who make such complaints, they say, is a fact of life.

"In the real world, if you complain about somebody, he's going to get back at you or try to," said Posner, who represents workers. "When things get really bad, we advise people to get their resumes out. . . . I can't help people much in the short term."

The issue of whether employers should be financially responsible for workplace harassment also came up last week in oral arguments before the U.S. Supreme Court. Federal courts have often required plaintiffs to prove that an employer knew or should have known about the alleged harassment, even when the alleged harassers were supervisors. That has made it tougher for workers to sue their companies under federal law than under California law, a situation expected to

remain intact no matter what the high court rules.

In the new cases before the court, however, women's rights groups and the Clinton administration are arguing that companies and school districts should be held liable when a supervisor harasses a female worker, or when a teacher has an affair with a schoolgirl, even when the alleged victim does not tell anyone in authority.

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