

Just Complain To Your Harasser - Good Enough

AUTHOR: SANDBERG PHOENIX

By Courtney Cox

Cox, C. Is it enough that an employee who is being harassed complains only to the harasser? The Sixth Circuit Court of Appeals says yes, it is enough.

This is a case of first impression and creates a reason for concern and caution for employers.

In this case, a male supervisor supervised three female employees. On multiple occasions he made sexually explicit comments to them and touched at least one of them. A male co-worker witnessed this. The three female employees asked the supervisor to stop. The male employee also complained to the supervisor and told him to stop. All four employees were soon terminated within weeks of each other. The supervisor had a role in the terminations.

The EEOC sued the company on behalf of the four employees, alleging sexual harassment and retaliation for the female employees, and retaliation for the male employee. A jury awarded the employees over \$1.5 million in compensatory and punitive damages. The company appealed. On appeal the company argued the employees had not engaged in protected conduct by merely complaining to the person who was the harasser. The Court of Appeals rejected this argument, holding that an employee's demand to a harassing supervisor that the supervisor cease his harassing conduct constitutes protected activity under Title VII's anti-retaliation provision.

This is clearly an expansion of what the law considers protected activity under Title VII. This means that employers must take extra care about what is taking place in the workplace and emphasize to employees the importance of reporting sexual harassment through multiple avenues. Employers should also adopt a policy that requires supervisors to promptly report complaints made to them about their own conduct.

EEOC v. New Breed Logistics, 2015 WL 1811018 (6th Cir. Apr. 22, 2015).