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Illinois Supreme Court to Rule on Scope of Strict Liability for Supervisor Harassment under Illinois Human Rights Act

The Illinois Supreme Court recently heard oral argument in the case of Sangamon County Sheriff's Department v. State of Illinois Human Rights Commission, No. 105518 (Ill. S. Ct.) (oral argument heard on January 15, 2009), and will decide whether an employer in Illinois is strictly liable for sexual harassment committed by any supervisor, regardless of whether the alleged victim of harassment reported directly to the supervisor. The issue arises under the strict liability section of the Illinois Human Rights Act ("IHRA"), a unique statutory provision found in Illinois, but not existing under Title VII, other federal discrimination statutes or most state discrimination statutes. In short, the Illinois Supreme Court will soon decide whether an employer is automatically liable for harassment by a supervisor based solely on supervisory status.

The anticipated decision in Sangamon is important because the Illinois Supreme Court should define the scope of strict liability for supervisory harassment under the IHRA and clarify an important issue for Illinois employers in sexual harassment litigation.

The IHRA imposes a different standard for employer liability in sexual harassment cases than that imposed under Title VII.* The IHRA states that it is a civil rights violation for:

[A]ny employer, employee, agent of any employer, employment agency or labor organization to engage in sexual harassment; provided, 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. 775 ILCS 5/2-102(D).

The Illinois Human Rights Commission ("Commission") has determined that this section of the IHRA imposes automatic liability on employers where *any supervisor* sexually harasses an employee – even where the employee does not directly report to the supervisor and where the supervisor has no authority to affect the employee's terms or conditions of employment.

Key Facts and Points of Law

In Sangamon, a sergeant in the Sangamon County Sheriff's Department allegedly sexually harassed a civilian records department employee. The employee did not directly report to the sergeant, and he played no role in her hiring, firing or performance evaluations. Upon learning of the harassment, the employer immediately conducted an investigation and suspended the sergeant.

* Although strict liability in sexual harassment claims is different, the IHRA (and Illinois cases interpreting the IHRA) are generally consistent with federal statutes and cases in the seriousness and nature of conduct required to state an actionable harassment claim.

The Illinois Human Rights Commission found the employer strictly liable under the IHRA based solely on the sergeant’s supervisory status, despite remedial measures taken by the employer to stop the harassment. Feleccia and Sangamon County Sheriff’s Dept., 2006 ILHUM LEXIS 1 (1999 SF 0713, Jan. 3, 2006).

On appeal, the Illinois Appellate Court disagreed with the Commission and held that employers are strictly liable for sexual harassment under the IHRA only where the employee reports directly to the harassing supervisor, or where the supervisor has the authority to alter the employee’s terms or conditions of employment. Sangamon County Sheriff’s Dept. v. State Human Rights Commission, 375 Ill. App. 3d 834 (4th Dist. 2007).

The Appellate Court noted that “neither the Commission nor [the complainant] cited a case or statute that dictates an employer is strictly liable when an employee is sexually harassed by a person who holds a supervisory position, albeit a position in a different department where that person does not have any supervisory control or authority over the employee alleging harassment,” and “[o]ur research has not lead us to such a case” either. Id. at 847. The Illinois Supreme Court agreed to hear the appeal in Sangamon to resolve the conflict between the Appellate Court and the Commission in the interpretation of the scope of the IHRA’s strict liability provision.

Implications for Employers

- Although the Illinois Human Rights Commission would seek to hold employers automatically liable under the IHRA for sexual harassment committed by any and all supervisors, the Illinois Appellate Court’s holding in Sangamon is directly contrary to that position.
- If the Sangamon case is overturned by the Illinois Supreme Court and employers are held strictly liable for any and all supervisor sexual harassment, such an outcome will likely have even broader implications to impose strict liability for all types of harassment under the IHRA, i.e., racial harassment, disability harassment, and religious harassment – as those claims are all analyzed in a similar fashion under the IHRA.
- While the Illinois Supreme Court has not addressed a significant issue under the IHRA in several years, it will likely do so more frequently now that plaintiffs are permitted to proceed directly to state court with claims brought under the IHRA. See, our September, 2007 Client Alert on amendment to IHRA permitting discrimination and harassment lawsuits to be filed directly in Illinois state court, at www.socw.com.

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