



American Law Homework Solution – sample

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1 Teddy's Supplies' CEO has asked you to advise him on the facts of the case and your opinion of their potential liability. He wants to settle the case. Write a memo to him that states your view of whether the company is exposed to liability on all issues you feel are in play. Include in your memo any laws that apply and any precedent cases either for or against Teddy's case that impact liability. Include in the memo your suggested "offer of settlement" to Virginia. Back up your offer using your analysis of the case against Teddy's. (Points: 30)

In the present situation wherein an appeal has been filed by Ms. Pollard the Court might look into the following points for determining if the behaviour of Virginia's supervisor King and the other male colleagues amounted to acts of sexual harassment and what will be the company's liability in such a case.

Sexual harassment is a form of discrimination that violates Title VII of the Civil Rights Act of 1964.

The U.S. Supreme Court has recently decided two important cases in the area of sexual harassment. *Burlington Industries, Inc. v. Ellerth*, and *Faragher v. City of Boca Raton*. In previous cases, courts have distinguished between two types of supervisory sexual harassment: (1) *quid pro quo* harassment, where the supervisor conditions some job benefit or detriment upon a subordinate's acceptance of sexual advances or favors; and (2) hostile environment harassment, where the supervisor subjects a subordinate to sexual comments, gestures, or advances which are sufficiently severe and pervasive to alter the conditions of the employee's employment. In these

two recent decisions, the Supreme Court clarified the standards for employer liability in such situations.¹

If a supervisor subjects a subordinate employee to some negative job action based upon the employee's acceptance or rejection of his/her sexual advances, the company will be automatically liable for that supervisor's harassing conduct. It is irrelevant in such a situation whether the company maintained an anti-harassment policy or whether the victim complained to management, and no affirmative defense is available to the employer in such cases. Examples of tangible employment action include: discharge, demotion, pay cuts, withholding a raise or a promotion, job reassignment with significantly different duties, or creating work conditions that are so intolerable that the employee is forced to resign.²

Where a supervisor acts in a manner which creates a hostile work environment for a subordinate employee, but does not take any negative job action against that employee, and where the conduct is extreme, severe or pervasive, the employer will be held liable for sexual harassment unless it can meet the following requirements. The employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior; and the employee unreasonably failed to take advantage of preventive or corrective opportunities provided by the employer or to avoid harm otherwise. The key to avoiding liability under this standard lies in the establishment of, and strict adherence to, the company's anti-harassment policies and procedures.³

In the light of the precedent set by the Supreme Court, in the present situation, the Court can hold Teddy's liable for sexual harassment of Ms. Virginia based on the fact that her

¹ See, Ostby Elena L., *Sexual Harassment: U.S. Supreme Court Cases Hold Employers Liable*, available at <http://library.findlaw.com/1998/Jul/1/129543.html>

² See, Ibid

³ See, Ibid

supervisor Stephen King created a hostile work environment and not adhering strictly to the company's anti-harassment policies and instead participating and encouraging sexual harassment.

Furthermore, Pollard was disparately treated because she was the one thrown out of the job for one incidence of indecent behavior whereas her supervisor and other men who constantly involved in sexual harassment behaviour, no action was taken against them.

Therefore, at this stage of Appeal, I will suggest offering mediation and try to settle the matter out of the Court.

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