

But It Was With My Wife: Failing To Address After-Hours Workplace Indiscretions

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ABSTRACT

Tom, an employee at Aztec Systems, was caught by Rose, a member of the cleaning staff, having sex, after hours, on his work desk with his wife. An upset Rose discussed the matter with Aztec's human resources manager. The HR manager Fred, Tom's boss Janet, and the company CEO Alan, decide that there was no disciplinary action needed since Tom and Janet were married. An angry Rose was faced with a difficult decision – whether or not to file a claim against Aztec Systems for sexual harassment.

COMPANY BACKGROUND INFORMATION

*A*ztec Systems was founded in 1996 in Lincoln, Nebraska by three friends who wanted to use their computer skills to provide information services to the medical and insurance fields. Aztec served as a database storage host for medical insurance information. Hospitals and other medical service providers paid usage fees to access the Aztec database. Insurance companies also paid Aztec access fees for data on current and potential customers. Aztec was organized into three primary functional units: marketing, accounting/finance, and information services. At the time of the incident, the company also had a loosely defined human resources manager.

The marketing department had four employees, a marketing generalist, a marketing proofreader, a graphic designer, and a chief marketing officer (CMO) who reported directly to the Chief Executive Officer (CEO). The accounting department had five employees, four accounting assistants and one chief accounting/financial officer (CFO) who likewise reported to the CEO. The bulk of Aztec's employees worked in the information services department. Information services employed software engineers, program writers, and systems analysts. Information services employees engaged primarily in client troubleshooting, project development, and data entry. The Chief Information Officer (CIO) reported directly to the CEO.

Relatively small at first (40 employees), Aztec quickly grew to over 200 employees working in three locations (Lincoln, Atlanta, and Corvallis, Oregon). Aztec secured contracts with over 50% of the market in which they compete. Aztec was in a strong strategic and financial position to be a leader in their industry. However, looming problems prevented Aztec from reaching their potential.

PROBLEMS IN THE MARKETING DEPARTMENT

Aztec's marketing department was primarily responsible for hosting conferences and conventions for both the medical and insurance fields. The marketing department would host events and social gatherings in order to inform potential customers of the database services that they offered. Furthermore, the events provided an opportunity to sustain good relationships with their current customers. The marketing department also produced general informational and promotional advertising materials for the company.

Tom Everett was one of Aztec's original employees. However, Tom had not risen through the ranks at Aztec like many of his "ground floor" co-workers. In fact, Tom was still a generalist in the marketing department. His primary responsibilities were in customer relations, specifically making sure all of Aztec's customers had a good time at the company sponsored conferences and conventions. Tom Everett was a fun-loving person who never met a stranger. He was the type of employee whom everyone loved to be around but who never did too much to get noticed at work. All of that changed on the evening of February 14.

It was Valentine's Day and Tom and his wife of eight years, Marsha, had big plans. Tom was working later than usual and the couple had planned to have a romantic dinner at Anthony's Italian Restaurant close to the Aztec offices. Marsha decided to meet Tom at work and the two of them would ride to Anthony's from Aztec. When Marsha arrived at 7 p.m. there were still several Aztec employees in the building but no one was left in the marketing department except Tom. Marsha walked into Tom's office and pushed the door closed, or so she thought. The couple embraced, then kissed, then one thing led to another and they began having sex on Tom's office desk.

Rose had worked in the custodial department at Aztec for three years. She was a model employee and highly valued for her efficiency and professionalism in her daily work. Rose's normal work hours were from 6:00 until 10:00 nightly. She cleaned the office spaces "after hours" in order to avoid disrupting the daily activities of the other Aztec employees.

Rose made her way to the marketing department right on schedule. Her first stop was always Tom Everett's office. Tom's door was cracked open just like usual to allow Rose the access she needed. Rose opened the door to find Tom and Marsha. Embarrassed, she quickly apologized and closed the door. Tom ran out to stop her to explain, apologize, or whatever it would take to reduce the tension. However, Rose was quite shaken by what she had witnessed and would not stop to talk to Tom. Rose went home early from work that night. She wrestled with the decision of what she should do in the morning when she returned to pick up her paycheck for the week.

A TURNING POINT FOR AZTEC

Tom knew that there could be big trouble waiting for him if he did not get this situation resolved quickly. He immediately called Janet Parker, the CMO and his immediate supervisor. Janet set up a meeting at 8 a.m. the next morning with Tom to discuss the incident. Janet then called Fred Weatherly, the de facto human resources manager. Fred lacked a college degree, much less any formal human resources training. Fred's previous employment was as the assistant director of parks and recreation for the city of Lincoln. Fred's lack of knowledge and education in human resources management had resulted in no sexual harassment training whatsoever at Aztec. Now Fred, Janet, and Tom had to decide what to do. After their 8 a.m. meeting in which Tom recounted the events of the previous night, Fred and Janet decided that they needed to bring the CEO of Aztec, Alan Davidson, into the decision making process.

In the meantime, Rose had arrived at Aztec to pick up her pay check. She had decided, after a fitful night of little sleep, that she had to tell Fred Weatherly in human resources what had happened and how uncomfortable the incident had made her feel. Fred nervously met with Rose, taking notes and asking a few meaningless questions. He thanked Rose for coming and assured her that nothing like this would ever happen again.

Finally, after having met with all of the parties, comparing notes, and finding no tangible differences in Tom's and Rose's stories, Alan, Fred, and Janet had a decision to make: should they reprimand Tom, should they administer some other form of punishment, should they terminate Tom, or should they do nothing. After 45 minutes of back and forth discussion, Alan, Aztec's CEO summarized their discourse by stating, "It was his wife, what can we do about that?" Fred and Janet, similarly disposed, agreed that no disciplinary action was needed. Fred was then given the task of informing Rose and all of the custodial staff that they needed to be more careful when entering someone's private office to conduct their cleaning and maintenance work. Rose was extremely anxious and concerned about her future employment at Aztec as well as her next trip into anyone's office to do her daily cleaning. Her anxiety was only fueled by her knowledge that Tom was not reprimanded in any way. Rose was furious with this outcome and found herself at another decision crossroad – to file a claim or not against Aztec.

Please direct all correspondence to the first author. An earlier version of this case was presented at the 2007 Southwest Case Research Association (SWCRA) Annual Meeting in San Diego, CA. The authors would like to thank Marlene Reed and Jennings Marshall for their helpful comments on an earlier draft of this case. This case was developed based on interviews of actual staff employed at the firm in question. Disguises have been used to hide the location, industry, and names involved.

Instructor's Manual

CASE OBJECTIVES AND USES

This case is designed for use in Human Resource Management courses and could be used at either the undergraduate or graduate level. This case should be used to reinforce chapter material from a Human Resources Management text on Sexual Discrimination or Sexual Harassment. After this case exercise and instructor discussion, students should be able to identify the differences between hostile environment and quid pro quo sexual harassment, the legal proofs for both forms of sexual harassment, and employer liability for sexual harassment. Students should also be able to discuss the need for and minimum components of an effective employee handbook and clearly stated sexual harassment policy and procedures.

QUESTIONS

1. Has Rose been a victim of Sexual Harassment?

Answer

Per EEOC Guidelines on Sex Discrimination (see: http://eeoc.gov/types/sexual_harassment.html) sexual harassment is: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

2. What type of sexual harassment might this be? *Quid Pro Quo* (this for that) or Hostile Environment – and why?

Answer

This is potentially an example of Hostile Environment (HE) Sexual Harassment because the actions described created “an intimidating, hostile, or offensive work environment.” However, this one time offense may not be considered enough to constitute a hostile work environment. This is open to interpretation. The Supreme Court has held that for harassment to violate Title VII, it must be “sufficiently severe or pervasive ‘to alter the conditions of [the victim's] employment and create an abusive working environment.’” *Id.* (quoting *Henson*, 682 F.2d at 904). The Aztec case may fall short of this standard.

3. What are the proofs for *Quid Pro Quo* (QPQ) Sexual Harassment:

Answer

The complaining party is a member of a protected class. The conduct of a sexual nature was unwelcomed. The complaining party did not encourage it by word of deed. But for the complaining party's sex, he or she would

not have been subjected to the unwelcomed conduct. The complaining party's acceptance or rejection of the unwelcomed conduct would affect tangible job benefits.

Source: Robinson, Franklin, and Wayland. 2002. *The Regulatory Environment of Human Resource Management*. New York, Harcourt.

4. What are the proofs for Hostile Environment Sexual Harassment:

Answer

The complaining party is a member of a protected class. The conduct of a sexual nature was unwelcomed. The complaining party did not encourage it by word of deed. But for the complaining party's sex, he or she would not have been subjected to the unwelcomed conduct. The unwelcomed conduct was so severe or pervasive as to create an intimidating and adverse work environment.

Source: Robinson, Franklin, and Wayland. 2002. *The Regulatory Environment of Human Resource Management*. New York, Harcourt.

5. What is the employer's liability if the supervisor is the alleged harasser for *Quid Pro Quo* and Hostile Environment ?

Answer

QPQ: vicarious (strict) liability. *HE*: vicarious (strict) liability with affirmative defense.

Source: Robinson, Franklin, and Wayland. 2002. *The Regulatory Environment of Human Resource Management*. New York, Harcourt.

6. Who is liable if a co-worker, customer, or vendor is the alleged harasser for *Quid Pro Quo* and Hostile Environment ?

Answer

QPQ: not applicable. *HE*: direct liability.

7. What does the term *respondeat superior* mean in terms of sexual harassment liability?

Answer

The employer becomes liable when the employer knew, or should have known, of the harassment and failed to take appropriate action.

Source: Robinson, Franklin, and Wayland. 2002. *The Regulatory Environment of Human Resource Management*. New York, Harcourt.

8. What defense do companies have when employees claim that they did not know of a certain organizational rule or policy?

Answer

The employer's best defense is an employee handbook or manual. However, this handbook should never contain any language that suggests or insinuates a contractual relationship. Within this handbook there should be language that plainly and succinctly details steps and procedures for disciplinary action of all kinds – and especially

examples of what some of the actions that may result in disciplinary action. These manuals should also contain information on promotions, benefits, and other employment regulations. Employees should be required to read and in all cases sign a release form stating that they have read and accept the provisions of the handbook.

9. What are the minimum components of an employer's sexual harassment policy?

Answer

A statement that sexual harassment will not be tolerated. A definition of sexual harassment. Examples of conduct and behavior that could constitute sexual harassment including both QPQ and HE forms. A choice of channels for reporting sexual harassment, including how to report harassment during non work hours. Information on how the organization will handle the complaint to include conducting a thorough investigation and maintaining confidentiality. A statement that the organization will take appropriate corrective action to remedy any violation of the policy. A statement that the organization will take appropriate disciplinary action against any party making a fraudulent claim of sexual harassment.

Source: Robinson, Franklin, and Wayland. 2002. *The Regulatory Environment of Human Resource Management*. New York, Harcourt.

10. What would happen if Rose initially did not file a claim against Aztec, but changed her mind and filed a claim one year later?

Answer

Per EEOC guidelines on filing claims (http://eeoc.gov/charge/overview_charge_filing.html). All laws enforced by EEOC, except the Equal Pay Act, require filing a charge with EEOC before a private lawsuit may be filed in court. There are strict time limits within which charges must be filed: (1) A charge must be filed with EEOC within 180 days from the date of the alleged violation, in order to protect the charging party's rights, and (2) This 180-day filing deadline is extended to 300 days if the charge also is covered by a state or local anti-discrimination law. For ADEA charges, only state laws extend the filing limit to 300 days.

These time limits do not apply to claims under the Equal Pay Act, because under that Act persons do not have to first file a charge with EEOC in order to have the right to go to court. However, since many EPA claims also raise Title VII sex discrimination issues, it may be advisable to file charges under both laws within the time limits indicated.

To protect legal rights, it is always best to contact EEOC promptly when discrimination is suspected.

EPILOGUE

Rose chose not to bring suit against Aztec Systems. She continued to work as diligently as ever but avoided any and all contact with Tom. She has also been taking extra care to knock before entering any closed or partially closed door. Aztec's work culture has since taken on an environment of sexuality. Employees have been emboldened by the fact that Tom was caught and not punished in any way. Suggestive and inappropriate emails are now regularly transmitted among office personnel. Additionally, members of the workforce are now frequently propositioned. The new CFO has even asked his assistant to arrange dates for him with lower level administrative and clerical employees. The decision to allow Tom's actions to go unpunished have had an extremely adverse impact on the morale and quality of work life at Aztec Systems. Sadly it would appear that this decline in morale and quality of work life could have been prevented with better management.

NOTES