

Harassment Watch

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Sex Harassment Issues Arise in Unemployment Cases *Appellate Court Rules on Three Disputes*

By Marshall H. Tanick

Sex harassment cases occasionally arise in unemployment compensation cases. The Minnesota Court of Appeals recently addressed three cases that raised harassment-related issues.

In two of the cases, employees who were accused of sex harassment in the workplace but not discharged for that reason, were deemed ineligible for unemployment compensation benefits. In the other case, an employee who acknowledged domestic abuse lost his job because of that incident. The three cases reflect the way that harassment can weave its way through the unemployment compensation process.

Confidentiality Case

An employee accused of sex harassment was denied unemployment compensation benefits for breaching an employer's directive to keep quiet about the incident in *Baran v. Capital City Properties*, 2005 WL 2979298 (Minn. Ct. App. Nov. 8, 2005) (unpublished).

A restaurant chef was disciplined for sex harassment of a co-worker, and 10 days later, was terminated because the employee disobeyed the employer's admonition not to talk about the incident with other employees.

Affirming a ruling of the Department of Employment and Economic Development (DEED), the Court of Appeals found the

employee ineligible for unemployment benefits. Whether the employee's discussion of the incident with other employees violated the directive from the employer depended on which account was believed: the employee who testified that he was never told about confidentiality, or his boss, who testified that he twice told him "not to discuss this with anybody" because it was "no one's business," and to avoid retaliation against the victim.

The confidentiality directive was reasonable "for the protection of the victim." The employee's failure to comply with that directive constituted "misconduct," which disqualified him from receiving unemployment compensation benefits.

Cooperation Condemned

The failure of an employee to cooperate after being charged with sex harassment, but not found culpable, condemned the employee to be ineligible for unemployment compensation benefits in *Kanay v. Walgreen Co.*, 2005 WL 2979311 (Minn. Ct. App. Nov. 8, 2005) (unpublished).

The employee was fired for failure to cooperate after he was accused of sex harassment and refused to participate in an investigation, which transgressed the company's policy of investigating all sexual harassment claims and requiring all employees to cooperate in those inquiries.

The Court of Appeals upheld a DEED

determination denying benefits to the uncooperative worker. The employee was told that another co-worker had reported that he had made "inappropriate sexual remarks" to her and was directed to meet with a representative of the employer to investigate the claim. However, he "refused to provide or verify any information," including his name and Social Security number. After being told that he could be fired for failure to cooperate, the employee left the workplace, did not return and was then fired.



Marshall H. Tanick

Domestic Decision

Another unemployment compensation claimant who committed domestic assault, rather than sex harassment, also was denied unemployment compensation benefits in *Martin v. Metropolitan Council*, 2005 WL 2979262 (Minn. Ct. App. Nov. 8, 2005) (unpublished). The employee, a bus driver, was fired for violating a company policy that bars drivers who have committed "crimes against individuals."

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The department upheld his termination after he voluntarily told the supervisor that he had been charged with a felony domestic assault on his wife, and had been sentenced to six months in jail, which had been stayed, but that he hoped to get the charge reduced from a felony to a gross misdemeanor. Given a choice of resigning or being suspended without pay, the employee quit and then sought unemployment compensation benefits.

Upholding the decision of DEED, the Court of Appeals deemed the bus driver to have committed “disqualifying misconduct.”

The gravamen was not the employee’s conviction, but that he had committed a “breach of the employer’s policy.” Since the employee was aware of the policy and knew that a crime against an individual could cost him his job, his acknowledgment of the offense to his boss constituted “misconduct” precluding unemployment benefits.

The company’s policy prohibiting “crimes against individuals” was a reasonable one because bus drivers are required to “have contact with passengers and ... be responsible for their welfare.” The policy, therefore, established a “reasonable expectation,” and its

breach disqualified the employee from receiving unemployment compensation benefits.

HARASSMENT WATCH FACT

Harassment Issues in Recent Unemployment Cases in Minnesota

Baran v. Capital City Properties: ineligible for unemployment benefits for violating confidentiality directive.

Kanay v. Walgreen Co.: ineligible for refusing to cooperate in investigation.

Martin v. Metropolitan Council: ineligible for voluntarily divulging domestic abuse incident.

Sex Harassment in Workplace Examined

The law firm of **Mansfield Tanick & Cohen, P.A.** sponsored a seminar hosted by the newly organized Women in Film & television, Inc. (WIFTI) on sex harassment in the workplace following the Twin Cities premier showing of the highly acclaimed movie “North Country.” Filmed in Minnesota, the movie, which stars Academy Award winner Charlize Theron, is based upon the prolonged lawsuit waged by women miners on the Iron Range. Following the screening at

the Lagoon Theater in Minneapolis, Marshall H. Tanick (far left) of the law firm **Mansfield Tanick & Cohen, P.A.** moderated a panel discussion at *Stella’s Fishhouse* examining workplace harassment issues. He was joined at the program by other panelists. *From left to right: Sunny Sterland of WIFTI; defense attorney Linda Holstein; plaintiff and labor union lawyer Gregg Corwin; and psychologist Patricia Aletky.*



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