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EMPLOYMENT LAW

'Blue Collar' Workplace Does Not Excuse Sexual Harassment

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Special to the Legal

It may be hard to believe that there are still workplaces where pornographic magazines lay about and sexually suggestive toys and trinkets are visible. Yet, in the case of *Vollmar v. SPS Technologies*, No. 15-2087, 2016 U.S. Dist. LEXIS 166445 (E.D. Pa. Dec. 2), we are reminded that such workplaces still exist and arguing that this is just a “blue collar” environment will not support summary judgment.

MALE-DOMINATED WORKPLACE

Judith Vollmar began her employment as a machine operator with SPS Technologies in 1989. SPS manufactures performance fasteners and has a 90 percent male workforce. Vollmar worked on the first shift beginning in 2008 until July 2013.

Evidence in the case indicated that there were a number of sexually suggestive signs in the workplace as well as a few toys and trinkets in public areas that related to parts of the female anatomy. Additionally, there was a “Penthouse” pornographic magazine visible in the workplace. Vollmar also alleged that she was referred to in a typically offensive



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sexist term routinely and was regularly told that she did not know what she was talking about “because she was a woman.”

OFFENSIVE MATERIAL IGNORED

Incredibly, an SPS “team leader,” which is a midlevel supervisor position, was tasked with performing monthly sweeps of the workplace to look for inappropriate material and behavior. This individual saw some of the signs and trinkets, believed them to be inappropriate and potentially in violation of the company's sexual harassment

policy, but did not move them because “it wasn't important to him.”

In July 2013, Vollmar asked to be moved from the first shift to the third shift because a particular employee was staring at her while she was working. She believed that this employee's staring was, at times, sexual. Vollmar asked to be assigned to the third shift, which was supervised by a man with whom she had had an “on again, off again” romantic relationship for a number of years.

Vollmar's request was granted and she began working on the third shift and, at the same time, resumed her romantic relationship with the shift's supervisor. A few weeks later, Vollmar and the supervisor were called into a meeting regarding their relationship in relation to whether it violated the company's code of conduct. While Vollmar denied that she had resumed her relationship with the shift's supervisor, she claimed that other employees had violated the code of conduct and she raised concerns regarding harassment, comments and disparate treatment that she claimed to experience in the workplace.

SUSPENDED BUT LATER PAID

Shortly thereafter, it was discovered that the supervisor had listed Vollmar

as his emergency contact and life insurance beneficiary, which caused the company to revisit its investigation and ultimately to terminate the supervisor and suspend Vollmar for 10 days. Vollmar's suspension was initially

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without pay, but she was later awarded back pay for this period. She alleges, however, that she was not compensated for overtime that she would have otherwise received had she been working during the 10-day suspension. Vollmar brought suit against SPS claiming that she had been sexually harassed and retaliated against in violation of Title VII and the Pennsylvania Human Relations Act.

At the close of discovery, both SPS and Vollmar moved for summary judgment.

SEVERE OR PERVASIVE HARASSMENT

The court initially found that the environment in which Vollmar worked contained harassment that was "severe or pervasive" as defined by the U.S. Court of Appeals for the Third Circuit in *Andrews v. Philadelphia*, 895 F.2d 1469 (3rd Cir. 1990). The *Andrews* court held that "the pervasive use of derogatory and insulting terms relating

to women generally and addressed to female employees personally ... and the posting of pornographic pictures in common areas and in the plaintiff's personal workspaces" may serve as evidence of a hostile environment.

Because Vollmar had been undergoing therapy for alleged emotional distress caused by her work environment, the court found that she had established that her experiences at SPS had detrimentally affected her.

'BLUE COLLAR' WORKPLACE NO EXCUSE

The third element of the prima facie case is evidence that a "reasonable person of the same sex in the same position" would have found the environment harassing. This is to avoid the overly sensitive plaintiff from prevailing in what others would find to be a benign environment. SPS attempted to establish that a "reasonable person of the same sex" would not have found the environment harassing because of the "blue collar" nature of the workplace. It cited a number of cases where courts had found a distinction between the type of work being performed and the individuals performing it—such that a woman would, essentially, understand where she was working and would be expected to tolerate a certain amount of harassment.

The court found this argument to be "stereotyping" and strongly rejected the assertion that the "dismissive description of "blue collar" should serve as a panacea pass for sexist or offensive conduct in the workplace."

Further, while their evidence that Vollmar was a willing participant in

some of the repartee, and that she was fully capable of telling her co-workers to "get away from her when it suits her," the court found that because Vollmar was "one of only a few female employees subject to questionable comments," the argument that "everyone does it" was inapplicable.

Finally, the court found that SPS was a subject to respondeat superior liability because there was a genuine issue of fact as to whether the aforementioned midlevel manager (who thought it "was not important" to remove the sexual/sexist material from the workplace) was a supervisory employee as a matter of law.

TEMPORARILY LOST PAY IS 'ADVERSE'

The court also found Vollmar's claim of retaliation to be viable based primarily on the timing of her suspension in relation to her complaints. Most significantly, the court found that, although Vollmar was ultimately paid for her 10-day suspension, the delay in payment could be considered to be "adverse" such that it could dissuade a person from making a discrimination complaint.

The lesson of this case is simple. Sexual or sexist behavior has no place in the work environment, regardless of whether the employee is working on an oil rig or in a bookstore. Further, if management goes to the trouble of designating someone to look for inappropriate items in the workplace—he should know enough, or take his job seriously enough—to remove potentially offensive items. •