



Can You Fire Someone For Being Too Sexy?

Insights

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Is it possible to fire an employee because you think they are too sexy?

In a recent case decided by the Iowa Supreme Court, the judges held that such an action is acceptable under the law. Before your mind starts wandering too far about the repercussions of this decision, let's not get ahead of ourselves. This case has been widely ridiculed as a misapplication of commonly-accepted workplace law, a one-of-a-kind oddity. Still, it's out there.

The facts of the case start innocently enough....

"Please Cover Up"

In 1999, Dr. James Knight hired Melissa Nelson as a dental assistant in his Fort Dodge, Iowa dental office. Over the next ten years, they enjoyed a good working relationship – Ms. Nelson was a good dental assistant, and Dr. Knight became her "father figure" and mentor. She says that Dr. Knight always treated her with respect. Both were married and had children, and things seemed to be going great.

But under the surface a sense of unease was growing in Dr. Knight as he found himself becoming attracted to Nelson. They found themselves texting each other outside of work on innocuous matters – their kids' activities and other similar banter. Melissa says that she never led Knight on, never flirted with him, nor sought out any sort of romantic relationship.

To his credit, he did take a few reasonable steps in an attempt to quash his feelings toward her. Starting in about 2008, Knight informed Nelson that her clothing was too tight and distracting to him and asked her to wear more professional attire. On several occasions he even asked her to put on a lab coat over her clothes. Although she denies that she ever wore tight or inappropriate clothing (saying she almost always wore medical scrubs to work), she would indulge the doctor and cover up.

Dr. Knight wasn't completely innocent, however, as his statements and texts to her became increasingly flirtatious. He told her that she would know that her clothes were too tight if she saw a "bulge" in his pants. Another time when discussing the infrequency of Melissa's sex life, Dr. Knight told her, "that's like having a Lamborghini in the garage and never driving it." He once texted her and asked her how often she experienced an orgasm.

In late 2009, Dr. Knight's wife learned that he was texting with Nelson outside of work and confronted him, saying that her presence at the office presented a threat to their marriage and demanding she be terminated. In order to preserve his home life, he agreed. One day in January, 2010, out of the blue, Knight called Nelson into a meeting where he had arranged to have his pastor present as a witness and fired her. He read from a prepared statement and told her their relationship had become a detriment to his family and it was in his best interests to let her go. He later claimed that he feared that he would have tried to have an affair with Melissa down the road if he hadn't taken this step.

Nelson sued Knight for gender discrimination, but her claim was dismissed by the court, and in late December 2012 the Iowa Supreme Court (comprised of seven men and no women, by the way) rejected her appeal. They ruled that there was no evidence that Knight fired Nelson because she was a woman, noting in fact that he had hired another woman to replace her (probably one decidedly less attractive to his tastes). They concluded that Nelson presented an "irresistible attraction" to Knight, and while it may not have been "fair" to fire her, there was nothing illegal about the termination.

A Worthwhile Defense?

Our advice to employers: don't try this argument. It's reminiscent of the "creative" approaches that some companies took before the law was amended to include pregnancy discrimination as a cause of action. They would argue, "I didn't fire her because she was a woman – I fired her because she was pregnant. I would've fired anyone who got pregnant, it just so happens that only women become pregnant. That's not my fault." Courts were quick to reject this imaginative theory, recognizing that it was a veiled act of gender discrimination no matter how you put it.

The same holds true here. The Iowa Supreme Court agreed with Dr. Knight that he didn't fire Melissa because she was a woman, but because she presented herself as a threat to the Knight family marriage. But the reality of the situation is that only a woman could have presented a threat to the marriage, and therefore Melissa was seemingly being unfairly punished for being a woman.

A better approach is to enforce your no-harassment policies, and require individual managers to take personal responsibility to resist their own temptations at the workplace, rather than scapegoating a co-worker simply because they think she's "too sexy for the office."

Follow-Up

Interestingly enough, on June 24, 2013 – six months after the decision – the Iowa Supreme Court agreed to reconsider the case, which is a rare procedural step for any appellate court to take. We'll let you know whether the court changes the ruling or just makes technical corrections to the decision...

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