



## Hospital Receptionist Harassed By Patient – EEOC Sues

Insights

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Today, most healthcare employers are sensitive to issues of workplace harassment, although the focus of that sensitivity is usually upon issues involving co-worker to co-worker and supervisor to subordinate conduct. It is important to remember that the law's protection applies also to harassment from third persons who are not employees. And, given the presence of so many non-employees in the typical healthcare setting, the opportunities for problems arising are enormous.

The EEOC has recently filed a lawsuit which reinforces the need to be vigilant concerning harassment by non-employees in a healthcare environment. *EEOC v. Southwest Virginia Community Health System*.

### Comments From An Unusual Source

In a lawsuit filed in federal district court, the EEOC charged a Southwest Virginia Community Health System with violating federal law by subjecting a female employee to a sexually hostile work environment. According to the EEOC, a receptionist at the hospital was subjected to sexual harassment by a male patient from April to December of 2009, and again from June to September of 2010.

As described by the lawsuit, the harassment included unwelcome sexual comments, such as an invitation that she "run away" with the patient, statements that he was "visualizing her naked," and suggestions that she have sex with him. The Commission alleges that these kinds of comments were made both in person when the patient visited the facility and by telephone when he called in to the facility. Significantly, the lawsuit also alleges that the receptionist complained about these statements to her supervisor, who did nothing to stop them. On these facts, the EEOC seeks both compensatory and punitive damages, as well as injunctive relief, against the Health System.

Assuming that these allegations are provable, when the receptionist complained to her supervisor about this patient's conduct, the Health System was legally put on notice of the alleged conduct – even if the supervisor said nothing to anyone else in authority. At that point, it became incumbent upon the employer to investigate and, if appropriate, take prompt remedial action, even though the offender was a patient and not another employee.

Assuming the employee did complain to her supervisor, we can only speculate as to why nothing more was done, but it is quite possible and consistent with what has happened elsewhere, that the

harasser's status either caused the supervisor to conclude that there was nothing that could be done, or chilled the supervisor from further pursuing the matter. Either way, the Health System was put at risk.

### **Preventing This Type Of Problem**

So, how should an employer sensitive to harassment in all its forms deal with complaints about patients or other non-employees? The first, and most obvious, remedy is to make absolutely sure that supervisors are aware that harassment by patients – indeed, by any non-employee – is every bit as serious as harassment by employees. Employers should review their anti-harassment policies on that point and should make that clear in periodic training given to supervisors.

By the same token, nonsupervisory employees should be made aware that you expect them to raise complaints about such conduct from patients and other nonemployees, just as they are expected to advise of conduct by fellow employees.

Second, in the event that harassing conduct is brought to your attention, you must conduct a serious and thorough investigation. Of course, such investigations are often more difficult than more typical complaints, since you usually may not compel cooperation from nonemployees to the extent that you can from employees. But that does not mean that you should not gather as much information as possible, and then reach a reasonable conclusion.

Third, you must promptly act on the results of the investigation in such a way as is reasonably calculated to resolve the complaint. In many cases, this may result in a consultation with the patient or other non-employee. In other cases, it could even result in advising a patient to seek care elsewhere or in restricting the patient's access to certain areas of the facility, or at least actively monitoring the patient's conduct while at the facility.

In any case, the complainant should always be advised of at least the general action taken, and encouraged to report further misconduct. In addition, you should also periodically and on your own accord, inquire of the complainant concerning any recurrence.

Training, vigilance and prompt corrective action are the keys to avoiding the often huge cost of harassment lawsuits. These are no less important in the case of harassing conduct from patients, as from other employees.

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