

NONPROFIT HR MANAGER MAKES A \$100,000 MISTAKE

BY JOHN P. HAGAN, ESQ.

REHABILITATION ENTERPRISES (“RENEW”) IS A NONPROFIT CORPORATION WHICH PROVIDES SERVICES TO THE DISABLED. RENEW HIRED JEANETTE NELSON AS A PART-TIME CASE MANAGER



IN ITS REHABILITATION DEPARTMENT. AS PART OF HER DUTIES, NELSON WORKED ON A GRANT PROJECT WITH TERRY O’GORMAN, WHO WAS A SUPERVISOR IN ANOTHER DEPARTMENT.

{ FEMALE COMPLAINS About Sexual Harassment but NO ACTION TAKEN Against Male Harasser }

According to Ms. Nelson, Mr. O’Gorman made unwelcome sexual advances and remarks toward her. Ms. Nelson reported the harassment to her supervisor, who in turn reported it to RENEW’s president, Larry Samson. President Samson met with Mr. O’Gorman and Ms. Nelson on separate occasions to discuss the accusations. No discipline was taken against Mr. O’Gorman, and he completely discontinued all further harassment.

Separately, Ms. Nelson developed a friendship with Kyle Dittmer, a temporary worker hired by Mr. O’Gorman. Ms. Nelson provided rides to Mr. Dittmer to and from work and counseling sessions, and the two shared their personal problems. In addition, Ms. Nelson at times engaged in sexual banter with Mr. Dittmer.

{ MALE COMPLAINS About Sexual Harassment and FEMALE HARASSER IS FIRED }

Mr. Dittmer eventually ended the relationship and informed Mr. O’Gorman that Ms. Nelson had sexually harassed him. Mr. O’Gorman reported Mr. Dittmer’s complaint and Jim Stewart, the Human Resources Manager, investigated it. President Samson met with Ms. Nelson after HR Manager Stewart had completed his investigation and decided to discharge her.

Ms. Nelson filed suit against RENEW and Mr. O’Gorman for sexual harassment and retaliatory discharge. RENEW filed a motion for summary judgment, but the Court denied it. Eventually, the jury awarded Nelson \$90,000 for sexual harassment and \$100,000 for retaliatory discharge.

Ms. Nelson filed suit against RENEW and Mr. O’Gorman for sexual harassment and retaliatory discharge. RENEW

RENEW appealed, claiming that summary judgment should have been granted against Ms. Nelson on her retaliatory discharge claim. The appeals court denied RENEW’s appeal because the HR Manager, Mr. Stewart made a BIG MISTAKE. *continued*

{ HR Manager Gives President Some VERY EXPENSIVE Advice }

When president Samson met with Ms. Nelson to discuss Mr. Dittmer's accusations, he was armed with a memo from HR Manager Stewart. The memo listed detailed allegations against Ms. Nelson based on a

secret tape recording of her sexual banter with Dittmer. **HERE WAS THE MISTAKE:** in that memo, HR Manager Stewart stated that *"the fact that you present this type of detail may deter her from further action."*

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The jury saw this statement as trying to use sordid details to intimidate Ms. Nelson into not a filing her lawsuit. The jury concluded that if

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RENEW would go so far as to intimidate Ms. Nelson, it was not hard to believe that it would also fire her in retaliation for complaining about Mr. Gorman.

The jury was also swayed by two other facts. First, it disliked the fact that although Ms. Nelson and Mr. O'Gorman both reported sexual harassment about the other, only Ms. Nelson was fired. Second, the jury was swayed by the fact that president Samson fired Ms. Nelson shortly after she complained

{ Terminating an Employee SHORTLY AFTER She Complains Can be Very Strong EVIDENCE OF RETALIATION }

Employees often rely on this "temporal proximity" argument in retaliatory discharge cases. Employees argue that being fired shortly after complaining about harassment is evidence of retaliation. Employers, on the other hand, argue that a several months lapse between the termination and the complaint is evidence that no retaliation took place.

Courts agree with both arguments because, as one commentator has said: "Retaliators retaliate; they

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do not forebear." In other words, retaliation usually takes place in the heat of the moment. Your managers could benefit from another saying: "Retaliation is a plate best served cold," meaning that if a manager feels the urge to retaliate against an employee for reporting harassment, discrimination, etc., they should wait to cool off before

acting. Better yet, they should march themselves down to your office and get your advice before acting.

As a side note, the judge reduced Ms. Nelson's award to \$100,000, because that was the most she could

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recover under Title VII's damage caps. Still, a \$100,000 award against a nonprofit can be devastating. I wonder how HR Manager Stewart explained to RENEW's Board and donors why he wrote that note . . . ↩



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