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Minnesota Supreme Court Adopts Federal Sexual Harassment Liability Standard for Supervisors

By Attorney Michael L. McCain

On May 30, 2008, the Minnesota Supreme Court adopted the federal standard of liability for sexual harassment committed by a supervisor in a case brought under the Minnesota Human Rights Act ("MHRA"). *Frieler v. Carlson Marketing Group*, A06-1693 (May 30, 2008). The Court's decision in *Frieler* resolves the issue of supervisor harassment, and when employers will be considered responsible for such harassment under the MHRA.

In *Frieler*, a female employee learned about an open, full-time position in the shipping department. Thereafter, she expressed interest in the position to the shipping department's supervisor. The employee alleged that sometime after expressing her interest, this supervisor coaxed her into a limited-access room, and sexually harassed her on multiple occasions. Despite being offered the position, she subsequently resigned her employment.

The Plaintiff argued her employer should be held strictly liable for the supervisor's harassment. On the other hand, the employer argued that it should not be held liable unless it knew "or should have known of the harassment" (meaning that the supervisor's own knowledge should not be imputed to the employer).

The Court rejected both arguments, instead adopting the federal standard of liability to apply to claims of workplace supervisor sexual harassment under the MHRA. Under this standard an employer is vicariously liable for sexual harassment created by a supervisor. In circumstances where no tangible em-



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ployment action is taken against the employee (*i.e.*, termination, reduction in wages or work hours), the employer will prevail if it can show: (1) it exercised reasonable care to prevent and correct promptly any sexually harassing behavior; and (2) the employee failed to take advantage of a reporting policy or other method of correction.

In addition, the Court also adopted the EEOC's broad interpretation of who is a supervisor. Under the EEOC's definition, an individual qualifies as a supervisor if the individual has the authority to undertake or *recommend* tangible employment decisions or the individual has authority to direct the employee. Consequently, lead persons without authority to hire or fire may now be considered supervisors for purposes of vicarious liability under the MHRA.

What are the practical implications for employers? First, where no tangible employment action is taken, employers with harassment reporting policies may avoid liability. Accordingly, employers should review their anti-harassment policies and train their supervisors, lead persons and employees regarding inappropriate conduct in the workplace and how to report such conduct. If employers do not have an anti-harassment policy, they should implement one immediately or risk potential strict liability. Second, employers need to be aware that lead persons now may be considered a supervisor for purposes of vicarious liability in a sexual harassment claim under the MHRA. Consequently, employers could expect more lawsuits involving their lead person's conduct in the workplace.

For more information concerning how the Minnesota Supreme Court's decision in *Frieler v. Carlson Marketing Group, Inc.*, may impact your company, please feel free to contact Attorney Michael L. McCain or any other Seaton, Beck & Peters, P.A. attorney, at (952) 896-1700. We are happy to offer a free initial courtesy telephone discussion on this issue or any other labor and employment law issue. We look forward to hearing from you!

Upcoming Seminar

On August 19, 2008, several of our attorneys will be presenting at a Lorman Education Services Seminar on "Employment Law from A to Z" which is being held at the Holiday Inn Bloomington (I-35 at West 94th Street). Attorneys Tom Revnew, Jon Olson, Mike McCain and Corie Tarara will be speaking on topics such as The Hiring Process, Wage and Hour Issues, Employee Handbooks and At-Will Employment, Benefits and Leaves of Absence, Harassment and Discrimination and other pertinent employment law topics. To register, go to www.lorman.com and register for Seminar ID 380087 or call any of the participating attorneys and they will be happy to send you a registration form. Continuing education credits are available through Lorman.

Mark Your Calendar

The 2008 Minnesota SHRM State Conference will be held in St. Cloud on October 13 and 14. Seaton, Beck & Peters is a corporate sponsor of this event with a booth at the show, as well as presentations by Alec Beck, Greg Peters and Tom Revnew. For more information go to www.mn-shrm.org or contact one of the Seaton, Beck & Peters attorneys listed above.

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