If you have questions or would like further information regarding Molestation-Sexual Harassment, please contact:

Paul Rettberg
312-540-7040
prettberg@querrey.com

Querrey & Harrow
Result Oriented. Success Driven.
www.querrey.com®

ILLINOIS LAW MANUAL

CHAPTER VI
OTHER CAUSES OF ACTION

J. MOLESTATION-SEXUAL HARASSMENT

The Illinois Human Rights Act, 775 ILCS 5/1-101, et seq., is comprehensive legislation that prohibits discrimination based upon classifications such as age, sex, sexual orientation, religion, handicap, etc. One of the public policies advanced by the Act is freedom from sexual harassment in employment and higher education.

Sexual harassment is defined by the Act as:

> Any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when, (1) submission to such conduct is made either, explicitly or implicitly, a term or condition of an individual's employment, (2) submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual, or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

775 ILCS 5/2-101(e).

Sexual harassment and molestation are intentional acts. Depending upon the nature of the act, the party who sexually harasses or molests another may be guilty of some criminal offense, particularly criminal sexual assault or criminal sexual abuse.

Usually, the most germane issue in cases involving these types of acts is the civil liability of third parties for the acts of harassment or molestation carried out by others

under the defendant's supervision or control. For example, a plaintiff may attempt to hold the employer of the person responsible for the harassment or molestation liable for the plaintiff's damages.

Under the doctrine of *respondeat superior*, an employer may be held liable for the negligent, wilful, malicious, or criminal acts of its employees, when the acts are committed during the course of employment and in furtherance of the employer's business. Randi F. v. High Ridge YMCA, 170 Ill. App. 3d 962 (1988). For example, if the employee commits an intentional act with the dual purpose of furthering the employer's interest and venting personal anger, the employer may be held liable. Id. at 967. However, if the employee acts solely for his or her own benefit in committing the intentional act, then there is no liability. Id.

Randi F. involved the sexual molestation of a three-year-old girl by a teacher's aide employed by the defendant day care center. The plaintiffs attempted to hold the day care center liable and claimed that the acts of molestation took place "during the course of" the teacher's aide's employment. The court relied upon the general rule in cases involving the liability of a third party for another's intentional acts. That is, in determining whether an employee's intentional act is committed within the scope of his or her employment, courts focus on whether the act was committed within the time constraints and location of employment. Courts also look to whether the employee committed the act to further, at least in part, the employer's business. The court held that the molestation by the teacher's aide was a deviation from the scope of the aide's employment that had no relation to the business of the day care center. The day care center was not liable for the aide's acts. Id. Compare Parks v. Kownacki, 305 Ill. App. 3d 449 (1999), appeal allowed, 185 Ill. 2d 632 (1999) (church and diocese can be

responsible for priest's sexual abuse of 15-year-old girl because of guardian/ward relationship created when priest was allowed to keep a teenage girl in the rectory as his housekeeper, send her to school far from her parents, and to, at a minimum, exercise all the control over her that a legal guardian would be allowed to exercise), *reversed on other grounds,* Parks v. Kownacki, 193 Ill. 2d 164 (2000).

The Human Rights Act prevents employers from escaping liability for their employee's intentional acts of sexual harassment. However, the Act preempts many actions for negligence against employers based upon allegations of sexual harassment. In Geise v. Phoenix Co., 159 Ill. 2d 507 (1994), the court held that allegations of sexual harassment fall exclusively within the purview of the Illinois Human Rights Act, preempting a common law action for negligence based upon allegations of harassment.

In Geise, the plaintiff was subjected to sexual harassment by her supervisor. She filed a complaint in circuit court alleging liability against the supervisor and two counts of negligence against the employer (negligent hiring and negligent retention). The court upheld the dismissal of the two negligence counts. The plaintiff alleged what was essentially a civil rights violation (sexual harassment), and civil rights violations fall under the exclusive jurisdiction of the Human Rights Act. Therefore, a claim for negligence was preempted. Id.

The Human Rights Act imposes strict liability on employers for sexual harassment regardless of whether the employer knew of the harassment. Therefore, if the employee proved the harassment, then the employer was automatically liable under the Act, and an action in negligence was unnecessary. See also, Benitez v. KFC Nat'l Mgmt Co., 305 Ill. App. 3d 1027, 1036 (1999).