

WRONGFUL TERMINATION**\$8 million award for wrongful termination, sexual harassment might be a bit much**

by Joel Van Parys

Most companies have employees they view as “squeaky wheels” or “problem” employees who make numerous complaints, often without merit. Nevertheless, you must continue to investigate each complaint and take every allegation of discrimination or harassment seriously. That situation was at the crux of the issue in a recent case.

A longtime employee made multiple complaints and filed several grievances based on alleged discrimination and harassment. In the end, it was the employer’s failure to follow through and fully investigate each allegation, and its decision to depend on statements it had good reason to doubt, that opened the company up to liability.

From ice cream scooper to pharmacy tech

Maria Martinez worked at Rite Aid for more than 23 years. She started with the company as an 18-year-old ice cream scooper and worked her way up to cashier, then pharmacy clerk, and finally pharmacy technician. In her first 20 years of employment, she was named “Employee of the Month” about 20 times and “Employee of the Year” twice. She never received any customer complaints during her employment and generally received positive feedback on her performance.

Over the course of her long employment with Rite Aid, Martinez made many allegations that she was being discriminated against or harassed based on her race, gender, and use of medical leave. In 2005, her supervisor, pharmacist Kien Chau, made derogatory comments about her mental health and her age after she took medical leave. Chau told her on several occasions that she was “crazy,” “bipolar,” and “psycho.” He also said that she was “too old” and “over the hill.”

Chau prepared a written warning on December 15, 2006, alleging that Martinez had slammed a medicine bottle on the counter after he had counseled her not to request medication for herself in front of a customer. She contended that he was the one who had slammed the bottle, and she refused to sign the warning.

Employee files grievances, EEOC charges

On December 26, 2006, Martinez filed a grievance with her union in which she checked the box for harassment or discrimination and alleged she had been unjustly disciplined. Rite Aid’s district HR director didn’t take any action to commence an investigation of the complaint.

In December 2006, Martinez saw her former district manager, Bradley Lohman, who was still employed by Rite

Aid, at a bank in her neighborhood. Lohman approached her from behind and touched her shoulder and waist with both hands. She was uncomfortable with the physical contact, which she interpreted as a sexual advance.

On January 3, 2007, Martinez filed a second grievance with her union in which she specifically alleged that she was being discriminated against and harassed by Chau. Rite Aid’s investigation of her grievance revealed that Chau had asked other employees for help in getting Martinez fired, requesting that they make statements about her performance and alleged harassing comments. Rite Aid withdrew Martinez’s written warning after it learned that it might not be reliable.

Lohman was reassigned as the district manager at Martinez’s store in March 2007. He told Martinez that he knew she was a problem and he was going to “take care of her.” Rite Aid’s district HR director found out about the comment but considered it an “empty threat” and didn’t discipline Lohman.

On May 11, 2007, Martinez filed a charge with the Equal Employment Opportunity Commission (EEOC) alleging retaliation and discrimination on the basis of her sex, age, and national origin. She complained about Lohman’s inappropriate touching and subsequent threat of retaliation. She also called Rite Aid’s toll-free complaint number and left a message but never received a response.

Around June or July 2007, Chau became frustrated with Martinez’s alleged inconsistent performance and her taking time off to attend doctor’s appointments. On July 27, Martinez wrote to Rite Aid’s chief executive officer, complaining about a hostile work environment. Four days later, Rite Aid’s HR director and pharmacy district manager suspended and terminated Martinez for her inconsistent performance and previous written warnings, which were partly based on information provided by Chau when he asked employees to help him fire her. Rite Aid never responded to her July 27 complaint letter.

Martinez presents enough evidence at trial

After her termination, Martinez filed a lawsuit against Rite Aid and Chau. She claimed wrongful termination, retaliation for complaining about sexual harassment, intentional infliction of emotional distress, and invasion of privacy. After a four-week trial, the jury awarded her \$3.35 million in compensatory damages against Rite Aid and \$50,000 in compensatory damages against Chau. The jury also awarded \$4.8 million in punitive damages against Rite Aid.

Rite Aid appealed the jury’s decision, arguing, among other things, that Martinez didn’t present enough evidence to support the jury verdict. The court of appeals explained that the jury could have reasonably concluded that she was wrongfully terminated because Rite Aid’s district HR director failed to take corrective action in response to her

sexual harassment complaint and terminated her less than three months later based on unreliable reports of inconsistent performance.

The court also ruled that Martinez had enough evidence to support her claim for intentional infliction of emotional distress. She had presented evidence of discriminatory actions and retaliation for her refusal to submit to Lohman's sexual advance. However, her claim for invasion of privacy failed because there was no evidence that Rite Aid disclosed private information about her medical leaves of absence.

Damages reversed

The appellate court found that the jury's awards of economic and noneconomic damages against Rite Aid and the supervisor were impermissibly ambiguous and potentially duplicative and ordered a new trial on compensatory damages for all the remaining claims.

The appellate court found that there was no substantial evidence to support a finding that any officer, director, or managing agent of Rite Aid either participated in or condoned any malicious conduct. Accordingly, the appellate court reversed the \$4.8 million punitive damages verdict. *Martinez v. Rite Aid Corporation* (California Court of Appeal, 2nd Appellate District, 4/23/13, unpublished).

Bottom line

This case is a good reminder that companies should be diligent about investigating each report of discrimination or harassment and take appropriate disciplinary action. You must thoroughly investigate every report of discrimination, harassment, or retaliation and discipline any employees who have violated company policy.

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