



**Responding Promptly to
Deckhand's Complaint
Precluded Sexual Harassment Liability**

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How can an employer avoid liability for sexual harassment when an employee has been harassed by another crew member? The Fifth Circuit recently ruled that prompt remedial action may protect the company even if it does not immediately stop the alleged harassment.

Ugly Conduct, Packaged Together Close in Time

In *Kreamer v. Henry's Towing*, a male deckhand aboard a tug claimed he was harassed by another male deckhand. Each tug had a two man crew consisting of a captain and a deckhand. Each captain could discipline his own deckhand, but not another tug's deckhand. The tugs were assigned to work offshore for fourteen day hitches.

Kreamer claimed a deckhand assigned to another tug servicing the same Chevron-Texaco rig repeatedly harassed him. The deckhand initially grabbed Kreamer between the legs, prompting Kreamer to complain to his captain. The deckhand allegedly grabbed Kreamer three more times that day, telling Kreamer he wanted to "compare packages." Later that day, the captains from both tugs sat down with the deckhand and told him to stop bothering Kreamer.

Kreamer claimed the deckhand kept bothering him. Kreamer claimed the deckhand made offensive gestures, whistled at him, and grabbed him again. Kreamer's captain again requested that the other captain put a stop to it. The next day, the deckhand continued bothering Kreamer, including interfering with Kreamer's work. Kreamer's captain spoke with the deckhand directly and again reported it to the other captain. The following day, the deckhand snuck up behind Kreamer and grabbed him. Kreamer complained again, and the deckhand received another warning. The next day, the deckhand again interfered with Kreamer's work and blew him a kiss.

The following morning, Kreamer woke up to find the deckhand in his sleeping quarters, staring at him. He did not say anything to Kreamer, did not touch him, and did not attempt to get in Kreamer's bed. The deckhand left when Kreamer yelled at him to "get the hell out." Later that morning, the deckhand grabbed Kreamer, interfered with his work, and tried to put a hot lighter between



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Kreamer's legs, burning Kreamer's wrist in the presence of the two captains and a Chevron-Texaco representative.

On day six, the deckhand grabbed Kreamer from behind while in the engine room, telling Kreamer he wanted to engage in a sexual act with Kreamer. Kreamer reported the incident, and the deckhand was removed mid-shift. Kreamer never had to directly work him again.

The company's human resource manager met with Kreamer after his hitch and reviewed detailed notes Kreamer kept about the deckhand. The deckhand was disciplined, but not fired. Kreamer claimed the company should have fired the deckhand rather than just giving him a warning and transferring him mid-hitch. Dissatisfied with the company's handling of the matter, Kreamer filed suit alleging he was sexually harassed and subjected to a hostile work environment. Kreamer's case was dismissed following discovery, and he appealed.

No Liability for Sexual Harassment Because Company Took Prompt Remedial Action Under the Circumstances

Title VII of the Civil Rights Act of 1964 prohibits workplace discrimination based on sex. To establish corporate liability for hostile work environment sexual harassment by a co-worker, a plaintiff must prove: (1) he is in a protected class; (2) he was subject to unwelcome harassment; (3) the harassment was based on sex; (4) the harassment affected a term, condition or privilege of employment; and (5) the employer knew or should have known of the harassment and failed to take prompt remedial action.

To constitute prompt remedial action, an employer's response to a harassment complaint must be "reasonably calculated" to end the harassment. The court noted that an employer's actions need not end harassment instantly to qualify as reasonably calculated. Instead, determining what is calculated to end harassment depends on the context, including the severity of the harassment, how frequently it occurs, and the effectiveness of the company's initial steps relative to "the company's lines of command, organizational format[,] and immediate business demands."



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The court found the company's response to Kreamer's complaint to satisfy this standard. The captain acted immediately to try to stop the deckhand from bothering Kreamer. The harassment lasted a total of six days, and the deckhand never physically harassed Kreamer after the company transferred him. Once the company realized its warnings to the deckhand were ineffective, the captains contacted on-shore personnel, who immediately transferred the deckhand. The Fifth Circuit found the company's response to be prompt and appropriate "given the [company's] chain of command and the realities of conducting business on an oil rig twenty miles from land."

Practical Considerations

This case highlights the importance of training supervisors, particularly ship captains and other offshore supervisory personnel, about how to handle and respond to employee complaints about alleged harassment. Taking quick and appropriate remedial action will substantially enhance a company's chances of avoiding liability for co-worker harassment, onshore or off.

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If you have any questions about this topic or wish to schedule harassment prevention training for your shoreside or seagoing personnel, please contact either of the following Legge Farrow partners, both of whom are Board Certified in Labor and Employment Law by the Texas Board of Legal Specialization:

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