

Co-Worker's Social Media Posts Can Create A Hostile Work Environment

Article By:

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***Okonowsky v. Garland*, 109 F.4th 1166 (9th Cir. 2024)**

Lindsay Okonowsky, a former staff psychologist at the Federal Correctional Complex at Lompoc, discovered that a corrections lieutenant (Steven Hellman) with whom she worked and who was responsible for overseeing the safety of guards, prison staff, and inmates had created an Instagram page that contained multiple posts that were overtly sexist, racist, anti-Semitic, homophobic, and transphobic. Approximately 100 of Okonowsky's co-workers followed the page, which explicitly or impliedly referred to the prison, prison staff, and inmates. Additionally, some of the posts contained derogatory images resembling Okonowsky and specifically referred to her, including a post "joking" that the all-male custody officers would "gang bang" Okonowsky at her home.

After Okonowsky discovered the account, she promptly reported it to her supervisors. However, one of her supervisors told her the page was "funny" and another stated that the page was not "a problem." After her report, the Instagram page "began to increasingly target her with ... posts [she] reasonably perceived to be an effort to intimidate her and discourage her from making further complaints." Two months after Okonowsky first complained about the Instagram postings (and after a new female warden arrived at Lompoc), the prison issued a cease-and-desist letter to Hellman, stating that his posts appeared to have violated the anti-harassment policy of the Bureau of Prisons. The letter did not stop Hellman, who continued for at least another month to make near-daily harassing posts on his Instagram page before he took down his Instagram page. Okonowsky later left the prison in search of a different job.

Okonowsky sued the Bureau of Prisons for sex discrimination under Title VII, alleging the Bureau failed to take adequate measures to address a hostile work environment at the prison. The district court granted the Bureau's motion for summary judgment. The district court limited its consideration of the evidence to just five posts made on the page that targeted Okonowsky because of her sex. The district court concluded that the five posts "occurred entirely outside of the workplace" because the posts were made on a staff member's personal Instagram page and none of the five posts was ever sent to Okonowsky, displayed in the workplace, shown to Okonowsky in the workplace, or discussed with Okonowsky in the workplace without her consent. The Ninth Circuit reversed, concluding that "offsite and third-party conduct [like the co-worker's Instagram page] can have the effect of altering the working environment in an objectively severe or pervasive manner."

Furthermore, a triable issue of fact existed as to whether the prison failed to take prompt and effective remedial action to address Okonowsky's allegedly hostile work environment.

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