

Supervisor Told Employee Patient Abuse 'Comes with the Territory'

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An employee responsible for drawing blood from nursing home patients was racially and sexually harassed by one of the patients. When she complained, her supervisor told her that “it comes with the territory” and “you just have to roll with the punches.” Read on to see why the U.S. 8th Circuit Court of Appeals (whose rulings apply to all Missouri employers) affirmed the lower court’s dismissal of the employee’s hostile work environment claim.

New employee encounters problem patient

Heartland Health Laboratories performs laboratory services, including blood work, for facilities that provide long-term health care. Chavonya Watson, an African-American woman, began working for Heartland as a route phlebotomist on June 18, 2012. Phlebotomists draw blood or take stool samples from patients for clinical and medical testing, collecting blood primarily by venipunctures.

Watson’s workday included traveling to various facilities. One of the homes on her route was Plaza Manor Nursing and Rehabilitation Center, and she spent a few hours there each day. As a new employee, she was subject to a 90- day probationary period.

At Plaza Manor, Watson was assigned to draw blood from a patient named Charles Ramsey. While she was attempting to draw his blood on September 10, 2012, Ramsey touched her between her legs, grabbed her crotch, grabbed the back of her head, and tried to kiss her. After he grabbed her crotch, she retreated briefly and then took a different strategy and knelt down to draw his blood. Because her crotch was no longer in his reach, he ran his hand up her side. Eventually, she left his room and reported the incident to her supervisor.

Watson’s supervisor entered an alert on Ramsey in Heartland’s file that stated “send males only to draw.” Anyone providing Ramsey with medical services in the future would know from the alert that only male phlebotomists should draw his blood. That same day, Heartland’s sales manager contacted Plaza Manor’s assistant director of nursing to address the incident, and the director stated “that he would take care of the situation.” Watson acknowledged that Heartland took prompt action to make sure she never provided medical services for Ramsey after she made the complaint.

Upon returning to the lab at the end of her workday, Watson asked her team leaders if she “could

possibly transfer [Plaza Manor] or trade [Plaza Manor]" so that it would no longer be a part of her daily route.

Her supervisor rejected her request because she "was hired to do that route and if she didn't do that route[,] then she wouldn't have a job."

You just have to roll with the punches

Watson no longer provided services to Ramsey when she worked at Plaza Manor. However, he still managed to verbally assault her on several occasions. For example, when she walked past him in a hallway on September 11, 2012, he called her "just a bunch of b____s and n____r b____s." After the encounter, she went to the nurse's station and "just went about her business."

A few days later, Ramsey saw Watson leaving the elevator and shouted to her, "They are going to put me out." She understood his statement to mean that Plaza Manor was going to remove him from the facility. A few days after that, as she was again leaving the elevator, Ramsey saw her walking by and said to another patient, "This b____h is getting me put out." When Watson notified her supervisor of Ramsey's continued verbal abuse, the supervisor responded, "It comes with the territory. You just got to roll with the punches."

Ramsey spied Watson as he was hanging around the door of his room a couple of days later. He went down to the nurses' station and stood there staring at her while she worked. Later, he called her a "b____h" as she walked past his room. A nurse standing nearby heard his comment and immediately confronted him.

Enough is enough

Watson was assigned to draw Ramsey's roommate's blood. When she received the assignment and went to the patient's room, she didn't realize the patient was Ramsey's new roommate. Upon her arrival in his room, Ramsey promptly asked her, "What the f__k are you doing over here?" She called her supervisor, who said that she would have someone else draw the roommate's blood.

A few days later, Watson was waiting for an elevator when Ramsey walked past her and said, "They're putting me out, b____h. I'm going to get you." He kept walking as he threatened her. Shortly after that, he was removed and banned from the facility.

Even though her patient problem was solved, Watson received several disciplinary write-ups related to poor attendance. She admitted that many of the write-ups were legitimate. However, she suffered no adverse consequences, wasn't "docked," and was never told not to report to work. In addition, her job assignments weren't changed.

The same day that Ramsey was banned from Plaza Manor, Watson got a flat tire and didn't report to work for several days. Under Heartland policy, an employee is considered to have voluntarily abandoned her job after she misses two consecutive days of work without properly notifying someone. Heartland called Watson and left multiple voicemail messages. However, she stopped answering her phone and deleted Heartland's messages without "even listen[ing] to them." Heartland concluded that she had abandoned her job.

Watson filed a lawsuit alleging violations of the Missouri Human Rights Act (MHRA). She claimed that Ramsey's actions constituted sexual and racial harassment that created a hostile work environment,

and Heartland constructively discharged her and retaliated against her when she reported the harassment. The district court dismissed her lawsuit, and she appealed.

8th Circuit's decision

Watson argued on appeal that Heartland created a hostile work environment by failing to mitigate Ramsey's sexual and racial harassment. To advance her claim, she had to show that she is a member of a protected group, she was subjected to unwelcome harassment, her protected status was a contributing factor in the harassment, it affected a term or condition of her employment, and Heartland knew about the harassment and failed to take prompt action to stop it. A hostile work environment exists when the harassing conduct creates an intimidating, hostile, or offensive atmosphere that unreasonably interferes with an employee's work performance.

Assuming that Heartland could be liable for Ramsey's conduct, the court rejected Watson's argument, finding a single racial slur, four sexual slurs, a threat, and a sexual touch during the course of about 10 days were insufficient to establish a hostile work environment claim. The court reasoned that Watson worked at the facility only a few hours each day, and the duration of Ramsey's objectionable conduct was brief, lasting only a few seconds each time

Watson next argued that her work environment was so intolerable, Heartland must have intended to force her to quit, thereby constructively discharging her. The court quickly rejected that argument, noting that after the first incident of harassment, Heartland removed Ramsey from Watson's list of patients. He was removed from the facility 10 working days later.

Finally, Watson argued that she was retaliated against for complaining about Ramsey's conduct because she received attendance write-ups just days later. However, she admitted she had attendance issues and several of the write-ups were legitimate. Further, she was never suspended for poor attendance, nor did she suffer any adverse action as a result of her attendance issues.

In the end, there was no connection between Watson's complaint about Ramsey and Heartland's handling of her attendance issues. Accordingly, the 8th Circuit concluded that all of her claims failed. *Watson v. Heartland Health Laboratories, Inc., et al.*, Case No. 14-2402 (8th Cir., June 25, 2015).

Bottom line

Heartland took several steps to protect itself from liability. First, the company took Watson's complaint about harassment seriously. It limited her access to the patient who was bothering her and contacted the facility's nursing director. Within 10 days, the patient was banned from the facility.

Second, despite her complaint, Heartland held Watson accountable for violating its attendance policy. An employer isn't required to ignore an employee's infractions just because she made a complaint. As long as the employer doesn't retaliate against the employee for complaining, it is justified in enforcing its nondiscriminatory performance and attendance policies.

Finally, after documenting her attendance problems and giving her warnings, Heartland formed a legitimate conclusion that Watson had abandoned her job. By working with employees fairly and consistently, an employer can significantly limit its legal liability.

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