

Hotel Maid Sexually Assaulted by Non-Employee May Sue for Sexual Harassment

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Can an employee in California sue their employer if they are sexually assaulted in the workplace and the employer had some prior notice that the assault could occur? The California Fair Employment and Housing Act ("FEHA") provides protections to workers from discrimination, including sexual harassment. The law allows workers to sue their employers when they suffer discrimination or sexual harassment while they are working. In *M.F. v. Pacific Pearl Hotel Management LLC*, Cal. App. 4th, No. D070150, the court ruled that workers are able to sue their employers under the FEHA when they have been sexually harassed or assaulted by nonemployees at their jobs.

Issue: Can an employee can sue her employer for nonemployee sexual harassment under the FEHA?

M.F. was employed as a housekeeper at the Pacific, which is a five-building hotel property owned by Pacific Pearl Hotel Management LLC. The hotel's engineering manager saw a trespasser on the hotel property one morning who was not a guest of the hotel. The trespasser was intoxicated and was carrying a beer, but the engineering manager did not tell him to leave or report his presence to the housekeeping staff. Later, the trespasser approached one of the housekeepers while she was cleaning a room and tried to give her money in exchange for sexual favors. A maintenance worker who was working nearby overheard and helped the housekeeper to make the trespasser leave the room. The trespasser then went to another hotel room where a housekeeper was cleaning and tried to get into the room. He again offered money for sexual favors. The housekeeper was able to close the door on the man and reported the incident to her manager.

That housekeeping manager used a walkie-talkie to notify the other housekeeping managers about the trespasser. That manager checked on the safety of the housekeepers in one building but not in the one in which M.F. was working. M.F.'s supervisor checked the rooms on one floor but not on the floor in which M.F. was working. The trespasser forced his way into the room that M.F. was working and told her to close the blinds. She refused, and he punched her in the face, knocking her unconscious. When she regained consciousness, he was raping her. The man continued to rape and abuse her for two hours. During that time, no one came to check on her whereabouts. M.F. suffered serious injuries from which she hasn't recovered. She filed a lawsuit under the FEHA against Pacific, alleging nonemployee sexual harassment and failing to prevent the harassment from occurring. The defendant filed a demurrer, which the superior court granted. The superior court dismissed M.F.'s

complaint, and she filed an appeal.

Rule: While the workers' compensation exclusivity doctrine prevents employees from suing their employers when they are injured at work in most cases, it does not preclude lawsuits when the employers violate the FEHA

Under the FEHA, employers may be liable to employees for sexual harassment by nonemployees if the employers knew or should have known about the conduct and failed to take corrective action immediately. The workers' compensation exclusivity doctrine states that workers must file for workers' compensation benefits when they are injured at work, including in situations in which their injuries resulted from inadequate security. However, additional facts may overcome the exclusivity rule. Claims under the FEHA do not fall under it and may be brought by employees against their employers.

Analysis

In M.F.'s case, she showed that the trespasser had been seen by the engineering manager and had harassed several housekeepers before she was assaulted. Her supervisor failed to check on her safety or to try to find out where she was despite knowing that the trespasser had sexually harassed other housekeepers. Pacific argued that she failed to state a claim under the FEHA because it did not have notice of the trespasser's conduct before he or she entered the property and that it took corrective action immediately upon learning of his conduct towards the other housekeepers. The court found that Pacific had sufficient notice of the trespasser's conduct from his earlier actions and the reports that were made by the other housekeepers. The court determined that whether or not the hotel's corrective actions were sufficient would be a question of fact and thus should be considered by a jury. The court found that her complaint stated sufficient facts to state a cause of action under the FEHA for nonemployee sexual harassment and Pacific's failure to stop the conduct from occurring.

Conclusion

The court ruled in favor of M.F. and remanded the case to the superior court to commence proceedings that were consistent with its ruling. It also ordered that Pacific pay M.F.'s appeals costs.

Workers who are sexually harassed or assaulted at work may be able to sue their employers without having to file for workers' compensation benefits for their injuries. If the employers knew about the conduct or should have known about it but failed to take corrective action, the injured workers may have valid claims against their employer under the FEHA.

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