

Labor and Employment E-news

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Offsite Misconduct & Remedial Measures

A federal court of appeals recently decided a hostile work environment case that reminds all employers of the need to address offsite conduct between co-workers. In *Lapka v. Chertoff*, No. 06-4099, 2008 U.S. App. Lexis 4391 (7th Cir. Feb. 29, 2008), Lapka alleged that a co-worker, Paul Garcia, raped her after they left a bar and while they were attending out-of-town training. For various reasons, the police elected not to prosecute Garcia. Lapka complained to her supervisors and filed a charge with the EEOC after Garcia and his brother visited her office on several occasions to see other co-workers. Lapka was subsequently diagnosed with post traumatic stress disorder and was placed on medical leave.

Lapka filed a hostile work environment claim alleging that the employer failed to investigate and take reasonable steps to protect her from future harm. The trial court dismissed her claim. The Seventh Circuit affirmed this dismissal, but in doing so reminded employers of the importance of addressing offsite conduct and of taking prompt investigative and remedial measure to prevent further harm.

The Seventh Circuit was clear that offsite co-worker conduct can constitute *workplace* harassment. In this case, the Court emphasized that even though the alleged rape occurred at a hotel and after employees were at a bar, the employer should have expected that employees will band together for society and socialize when they attend offsite training.

The Court found that the employer was not liable here, however, because it had responded to the situation properly. It sent a investigator to immediately interview Lapka and Garcia after the alleged rape and reasonably decided not to take any action against Garcia, because the police found a lack of evidence to prosecute. The Court also found that although the protective measures taken by the employer after the alleged rape were not perfect, they were adequate. The employer's steps included: adopting a policy to ban visitors to Lapka's office who were not there on "official business" and instructing Garcia's supervisor not to send Garcia to Lapka's office.

In summary, offsite conduct by co-workers can give rise to employer liability if the situation is not promptly and properly investigated and remedied. Appropriate remedial measures can include ensuring that co-workers are separated after an incident or more severe discipline, including termination.

If you have any questions regarding this E-News Bulletin, please contact the author as indicated below or your Butzel Long attorney.

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