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Recent Developments: Case Note: Sexual Harassment In Employment-Violation of Anti-Discrimination Laws Even with No Victim Loss of Job Benefits. *Bundy v. Jackson*, No. 79-1693, (D.C. Circuit, Jan. 12, 1981).

Linda Lee Panlilio

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CASE NOTE: SEXUAL HARASSMENT IN EMPLOYMENT—VIOLATION OF ANTI-DISCRIMINATION LAWS EVEN WITH NO VICTIM LOSS OF JOB BENEFITS.

BUNDY v. JACKSON, No. 79-1693, (D.C. Circuit, Jan. 12, 1981).

by Linda Lee Panlilio

Bundy v. Jackson, No. 79-1693, (D.C. Circuit, Jan. 12, 1981), pronounced a unanimous ruling that sexual harassment violates anti-discrimination laws, even where the victim's resistance does not result in a loss of job benefits.

The court cited the Equal Employment Opportunity Commission's recent guidelines on sexual harassment with approval but failed to incorporate the EEOC view of the absolute liability of employers for their supervisor's actions. EEOC would impose employer liability even if the employer forbade sexual harassment. The *Bundy* court finds that an employer "may negate liability by taking immediate and appropriate corrective action" when it learns of sexual harassment. EEOC would recognize such action as an employer defense.

The court strongly condemns sexual harassment as "inject(ing) the most demeaning sexual stereotypes into the general work environment . . . which always represents an intentional assault on an individual's innermost privacy." Circuit Judge J. Skelly Wright found such harassment to be discrimination with regard to the "terms, conditions, and privileges of employment," prohibited by Title VII because the conditions of employment include the emotional and psychological working environment.

The case seems to indicate that the employee can establish a *prima facie* case against the employer by showing herself to be a victim of a pattern and practice of harassment attributable to her employer and that she applied for and was denied a promotion "for which she was technically eligible and of which she had a reasonable expectation."

The reasonableness of the plaintiff's conduct may become an issue as the question of the employee's resistances was not fully answered. The opinion said that "it may even be pointless to require the employee to prove that she 'resisted' harassment at all. So long as the employer never literally forces sexual relations on the employee, resistance may be a meaningless alternative. If the employer demands no response from her other than action" when it learns of sexual harassment. EEOC would recognize such action as an employer defense however.

good-natured tolerance, the woman has no means of communicating her rejection."

Once the employee establishes her case, the employer must show clear and convincing evidence of legitimate, non-discriminatory reason for promotion denial, exceeding the Title VII requirements of mere articulation of a reason for failure to hire or promote. However, the plaintiff's burden is also increased, because Title VII required only a showing that she was "qualified" where *Bundy* requires a showing of "reasonable expectation."

In this case, the court proposed injunctive relief to deal with sexual harassment violations which would require the employer to notify all employees that sexual harassment violates the law. The employer should be required to establish and publicize a scheme to investigate and correct any harassment. Further the district court should retain jurisdiction to monitor compliance.

See: Legal Times of Washington, Vol. III, No. 32, Jan. 19, 1981. "Sexual Harassment Ruling to Prompt Employer Action" by Kim Masters.



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I	R	N	Y	M	U	A	T	T	A	C	H	U
N	R	I	T	R	I	P	E	M	R	E	D	S
D	E	K	E	O	T	P	R	O	C	E	S	S
E	S	A	U	F	C	E	N	J	E	U	V	I
M	T	F	R	O	L	A	U	T	N	D	T	O
N	C	M	S	R	A	L	I	B	E	L	L	R
I	G	E	I	P	I	H	L	E	V	Y	U	T
F	L	O	P	K	M	I	R	S	R	L	A	A
Y	B	A	W	J	T	C	E	J	E	P	S	E
R	O	V	I	V	R	U	S	R	T	Q	S	V
L	I	M	I	T	A	T	I	O	N	S	A	A
C	A	U	S	E	R	O	T	D	I	E	R	G

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