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Client Advisory

Employees Can Pursue Sexual Harassment Case Despite Waiting Years To Complain

In one of the first cases to point to the ongoing revelations from the "Me-Too" Era, the U.S. Court of Appeals for the Third Circuit recently held that an employee could proceed to a jury trial on her sexual harassment claim despite her failure to report that harassment over a period of several years. *Minarsky v. Susquehanna Cty.*, No. 17-2646 (3d Cir. July 3, 2018). In doing so, the Court found that, even though the employer had a well-established complaint policy and procedure, several justifications excused her failing to complain, including the societal change of the MeToo movement.

In this case, Sheri Minarsky worked as a part-time secretary at the County Department of Veterans Affairs. She worked directly for Director Thomas Yadlosky, Jr. in an area secluded from other county employees.

Minarsky alleged that shortly after she began working for the department in 2009, Yadlosky both physically and verbally harassed her. For example, she alleged Yadlosky regularly attempted to kiss her on the lips, embrace her from behind and massage her shoulders. Yadlosky allegedly also inquired about her whereabouts, even during non-work hours, would call her at home and would become hostile towards her if she did not answer his calls.

Despite being aware of the County's anti-harassment policy and complaint procedure, for approximately four years, Minarsky did not report Yadlosky's alleged harassment. After her doctor recommended that she report the harassment as a result of its effects on her health, Minarsky first emailed Yadlosky and then confided in a co-worker. Eventually, Yadlosky's supervisor became aware of Yadlosky's alleged harassment of Minarsky. Yadlosky's supervisor was actually aware of two prior incidents of misconduct by Yadlosky, but she had only verbally reprimanded him in the past. No further action, or formal reprimand, was taken against Yadlosky for his past actions. However after being interviewed by his supervisor and admitting to the allegations concerning Minarsky, Yadlosky was placed on leave and then terminated.

The trial court dismissed the case by finding that the employer had a well-promulgated policy, and because Minarsky never complained or otherwise took advantage of any preventive or corrective opportunities or to avoid harm otherwise. But, on appeal, the Third Circuit reversed and ruled that her case had to go to a jury trial on her claims of harassment and whether her failure to complain was reasonable.

In reversing the district court's ruling, the appeals court looked at several factors to reach its decision in favor of Minarsky. First, the Third Circuit reasoned that a jury could find that the county's anti-harassment policy and handling of Yadlosky were unreasonable. The court focused on the county's awareness of Yadlosky's past "pattern of unwanted advances toward multiple women" and how the county's failure to act could be construed as the county "turn[ing] a blind eye toward Yadlosky's harassment."

Second, the Third Circuit held a jury could find Minarsky's failure to report the alleged harassment was reasonable given her fear of the possible consequences of doing so. Specifically, the Third Circuit found that Minarsky had offered several legitimate reasons for her failure to complain, such as her fear of Yadlosky's hostility on a day-to-day basis and retaliation by having her fired, her worry of being terminated, and the futility of reporting based on the county's failure to take significant action against Yadlosky for prior allegations of harassment against other female employees.

Lastly, in reaching its holding, the Court expressly cited to the "#MeToo movement" and its impact on society. Although not directly citing that as a legal rationale, the Court identified the notoriety caused with the MeToo movement as a justification for her failure to complain. Employers should be aware of language from Minarksy that plaintiff's attorneys will likely use in support of their arguments to defeat summary judgment in order to get their claims in front of a jury.

Minarsky also can be a reminder for employers to implement regular training concerning anti-harassment policies especially concerning the issues of reporting, and acting on, allegations of harassment.

For more information, or if you have any questions regarding this advisory, you may contact Richard J. Ramones, Esq. at rramones@archerlaw.com or one of Archer's other experienced Labor and Employment Law attorneys at in Haddonfield, N.J. at 856-795-2121; Princeton, N.J. at 609-580-3700; Hackensack, N.J. at 201-342-6000; Philadelphia, Pa. at 215-963-3300, or Wilmington, Del. at 302-777-4350.