

Court finds junior college's harassment policy deficient

A strong policy against sexual harassment cannot shield an employer from liability if its complaint procedures are insufficient or unclear, the 10th U.S. Circuit Court of Appeals has ruled. The case should be of special interest to employers with multiple locations and those that operate outside normal business hours.

Frances Wilson, an employee of Tulsa Junior College (TJC) worked the 5 p.m. to 1 a.m. shift as a janitor at the school's Southeast Campus. TJC has three campuses the Metro, Northeast and Southeast and administrative offices in downtown Tulsa.

Although night janitors usually work in pairs, Wilson worked alone on February 15, 1994. Near midnight, Wilson's immediate supervisor, Kenneth Hall, entered the classroom where she was working, exposed himself, requested oral sex, and told Wilson she could have every Friday night off with pay if she accommodated his requests.

After telling Wilson he would return the next night to receive her answer, Hall warned that he could make life hell for her if she refused. He then followed Wilson the rest of the evening, preventing her from reporting the incident.

When Wilson finished work at 1 a.m. she drove home and called the local police, asking to speak to an officer

who she knew also worked part-time as a policeman at the Southeast Campus. Informed that he was unavailable, she was advised to come in and file a criminal complaint against Hall with the Tulsa Police Department, which she did that same night.

The next morning, Campus Police Supervisor Herb Webber was informed that an unidentified woman had called the local police claiming her supervisor, Kenneth Hall, had exposed himself. Webber took no immediate action, but late that afternoon asked an assistant to investigate the matter. The assistant contacted Hall, informed him of the allegation and asked who may have made it. No other attempt was made to determine Wilson's identity, or contact her.

Hall was arrested by Tulsa Police after he threatened Wilson, who was wearing a police body microphone. After the arrest, Hall was suspended for 3 weeks and later transferred to a different campus. Wilson later quit her employment with TJC to move to Missouri.

Wilson sued both Hall and TJC for hostile environment sexual harassment and a jury awarded \$100,000 in compensatory damages. TJC appealed, claiming its sexual harassment policy shielded the college from liability.

Upholding the jury verdict, the 10th Circuit said

TJC's sexual harassment policy was deficient in several respects. Although the policy allowed employees to bypass reporting harassment to their immediate supervisor, the court pointed out that the Director of Personnel designated to receive such complaints is located in a separate facility and is not accessible during the evening or weekend hours when many employees and students are on the various campuses.

In addition, the court said, the policy was insufficient because it did not provide a mechanism for filing after-hours reports with the campus police and did not impose responsibilities on them when they received such complaints. At trial, Wilson testified that she presumed her complaint to the police would serve as a complaint to the college since there was nowhere else to report the incident when it occurred.

Affirming the \$100,000 verdict for Wilson, the court said that because TJC did not exercise reasonable care in setting out the channels by which it could receive reports of after-hours harassment, the college was in no position to rely on those inadequate channels to shield it from liability. **RR**

Wilson vs. Tulsa Junior College, No. 96-5234 (10th Circuit, 1998)