

Decision Bears A Close Look On Application Of Quid Pro Quo Harassment

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Many readers will have a general sense that there is a difference between quid pro quo and hostile work environment (HWE) harassment. HWE is (fortunately, I suppose, in some relative sense) the more common form of harassment, and an employer can often avoid liability if it has taken sufficient steps to manage harassment in the workplace. Quid pro quo comes up less frequently, and is the conditioning of employment benefits such as a promotion, raise, or even continued employment on the submission to a managerial employee's sexual advances. Because the manager acts for the employer when he grants or withhold these tangible benefits, it is much more difficult for the employer to avoid liability based on its sound policies and practices. A case in New York federal court that is set for trial in January warrants a closer look because of the court's view of what might constitute quid pro quo harassment. The case, [Kerin v. Schenectady ARC](#), involves an employee who was terminated for performance reasons after a relatively short period of employment. She was hired to assist disabled residents with personal care needs. The plaintiff's supervisor is alleged to have directed her to watch a resident in a very personal situation. (Click on the case if you want the details.) The manager periodically checked back on her. The same thing happened the following day, but on the second day the manager made a suggestive gesture to the plaintiff. The plaintiff soon after said that her moral and religious values prevented her from performing these duties related to this resident. She was subsequently terminated for performance reasons, and the court said there was some evidence that there was no sign of the performance concerns until she declined these duties, and that the supervisor had trumped up some of the concerns. She sued for HWE and quid pro quo harassment, retaliatory termination, and other claims. While personal care duties involving particularly intimate matters clearly raise potential liability situations by their very nature, the case does show the potentially blurred lines between HWE and the harder-to-defend quid pro quo harassment. The allegations certainly suggest a hostile environment and a retaliatory termination, but raises the question of when conduct that we associate with a HEW constitute actual advances on the part of the manager. The linked decision is not long, and the court addresses the quid pro quo claim on pages 7-9. The court found there was sufficient evidence to send the quid pro quo claim to trial (along with others). Regardless of the legalities of the line between HWE and quid pro quo harassment, employers should give extra scrutiny to job actions against any employee involved in personal care matters, and use extreme care in how such job duties are assigned.

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