



In *Nessel v. JDM Golf LLC*, 2024 WL 3494378, the U.S. District Court for the District of Arizona granted summary judgment for an employer, dismissing the federal law and Arizona state law claims of a former employee alleging sexual harassment (hostile work environment) and retaliatory discharge for reporting the alleged sexual harassment.

The court's decision in favor of the employer highlights the importance of an employer's investigation and appropriate remedial actions in response to employee complaints.

The former employee's hostile work environment claim stemmed from two unrelated incidents of alleged sexual harassment that occurred during her employment with the defendant, a golf course company: (1) groping by a nonemployee golfer and (2) sexually suggestive text messages from a coworker. The *Nessel* court noted that to

establish a claim of sexual harassment, the plaintiff must show the creation of a hostile work environment that is sufficiently severe or pervasive to alter the conditions of the plaintiff's employment. Here, the court found that even viewing the facts alleged by the former employee in the light most favorable to the plaintiff, no reasonable jury could find that the two incidents, whether viewed separately or together, created an abusive working environment or altered the employee's conditions of employment.

The *Nessel* court's analysis next turned on the well-established proposition that when, as is the case here, the perpetrator of a hostile work environment is not a supervisor, an employer is liable only if the employer knew, or should have known, about the harassment and failed to take prompt and effective remedial action. Here, the district court found that the former employee had failed to provide sufficient evidence that, when the inappropriate conduct was reported to the employer, the employer's responses to her complaints were untimely or otherwise inadequate. The employer responded to the employee's report of the alleged groping by promptly contacting security and law enforcement and attempting to identify the nonemployee golfer. The employer also responded to her report of a coworker's sexually suggestive text messages by suspending the other employee for a week without pay and warning him that he could be terminated if his behavior continued. In both instances, the employee was not bothered by those individuals again, and no similar incidents occurred afterwards. Because no reasonable jury could conclude that the employer had failed to take prompt and effective remedial action, this provided a separate basis for dismissing the sexual harassment claim on a summary judgment motion.

The court also concluded that the claim of retaliatory discharge was appropriate for dismissal on the summary judgment motion. The court held that, based on the evidence presented by the former employee, no reasonable jury could find that her termination was retaliatory. The employer was enforcing its legitimate attendance policies against the employee, who had numerous attendance violations, and followed a course of progressive discipline, ultimately resulting in termination of employment.

The *Nessel* case is a reminder to employers to address sexual harassment complaints by employees promptly and, where appropriate, take timely and effective corrective action. Taking prompt and effective remedial steps when alleged harassment by nonsupervisory employees is reported can provide a legal defense for the employer under both federal and Arizona law. Arizona employers facing employee claims related to hostile work environments and retaliation should consult experienced counsel for guidance.

*This Update was co-authored by Perkins Coie Summer Associate Jasmin Spearnock.*

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