

EMPLOYMENT LAW UPDATE

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California Law

Carter v. California Department of Veterans' Affairs (4th Dist. June 4, 2003) 03 C.D.O.S. 4750

California Fair Employment and Housing Act ("FEHA") does not impose liability on employer for sexual harassment committed against employee by client or customer.

By Shoshana Y. Chazan and Jason A. Geller

Plaintiff Helga Carter worked as a nurse in a veteran's residence facility administered by the California Department of Veterans' Affairs. As was encouraged by her employer, she developed a personal relationship with one of the resident veterans, including quilting with him and inviting him to her home for dinner. However, the resident developed an inappropriate attachment to Carter, claiming to have had a clandestine affair with her, chasing her down the hallway in his scooter, leaving sexually explicit voicemails at her home and spreading rumors that he had slept with her at the facility.

Carter complained to her supervisor, who counseled the resident to stop his treatment of plaintiff, to no avail. Eventually, Carter sued the Department for sexual harassment, failure to maintain a workplace free of harassment, retaliation and intentional infliction of emotional distress. A jury found that Carter was subjected to hostile work

environment harassment. The Department appealed.

The primary issue presented on appeal was whether an employer may be liable under FEHA for the conduct of the resident, who was a non-employee client or customer. The appeals court analyzed both FEHA's statutory language and the legislative history and found that the Statute clearly imposes liability on an employer for harassment by another **employee** if the employer knows of the activity and fails to take immediate and corrective action. Government Code Section 12940(j)(1) was specifically amended to substitute "by an employee" in place of "any person." The court reasoned that the amendment shows the Legislature had the opportunity to adopt the expanded employer liability and declined to do so. Thus, the court concluded that FEHA does **not** impose a duty on the employer to protect an employee from sexual harassment by a non-employee.

While this case represents a victory for California employers, its significance should not be overstated: It is still important for employers to preserve an environment free of harassment.

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