



OSHPP E-News

Winter 2004

Office of Sexual Harassment Prevention & Policy (OSHPP)

This electronic newsletter provides an update on sexual harassment and gender discrimination issues.

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- New decision requires employees to take reasonable steps to report harassment
- New law holds employers liable for harassing conduct of customers and visitors
- Employer non-fraternization policies are legally enforceable
- Professor's comments about colleague's affair with student were not defamatory
- Sex in the Cinema presents "Love Actually" on February 17, 2004

The California Supreme Court decided that an employee's failure to report sexual harassment to the employer may reduce the amount of damages recoverable in a legal action. In the case, a female employee was sexually harassed by her supervisor from early 1996 to late 1997. Although she told a co-worker about the harassment, she did not report it to management until November 1997. The court found that under the California Fair Employment and Housing Act (FEHA), an employer is strictly liable for all sexually harassing behavior committed by supervisors. However, for the first time, the court also found that an employee has a duty to make reasonable efforts to use the employer's procedures for addressing sexual harassment complaints. If the employee unreasonably fails to use the preventive and corrective measures, and reasonable use of the procedures would have prevented some of the harm the employee suffered, then the damages may be reduced. *State Department of Health Services v. Superior Court (McGinnis)*. OSHPP encourages anyone who believes that they have been sexually harassed to report the behavior early. Failure to do so may affect your legal rights.

Under a new state law effective January 1, 2004, California employers may be liable for sexual harassment committed by customers, vendors or non-employees.

The law imposes liability on employers if the employer knew or should have known that third parties were engaging in sexual harassment and took no prompt and corrective action to address the behavior. The new legislation was enacted following a court decision in which a female bus driver was routinely harassed on her route by a male passenger who exposed himself to her. UCSD staff, students, and faculty are encouraged to report promptly inappropriate sexual behavior to OSHPP.

A recent California court decision found that terminating an employee for violating the employer non-fraternization policy was legal.

The case involved a supervisor who was dating his subordinate. The CEO reminded the supervisor of the company's conflict of interest policy and advised him that he could end the relationship or resign. When the supervisor continued the romantic relationship, he was terminated. He then sued for wrongful termination, invasion of privacy and sex discrimination. The court

upheld the employer action in enforcing its conflict of interest policy. The case is *Barbee v. Household Automotive Finance Company*. UCSD's consensual relations policy is at <http://adminrecords.ucsd.edu/PPM/docs/200-10.html>.

A federal appeals court found that a professor's comments about a colleague's affair with a student were not defamatory or an invasion of privacy. In the case, a faculty member at Western Illinois University expressed his concerns to the department chair and other faculty about a fellow faculty member who was romantically involved with a female graduate student. The graduate student filed a grievance and a lawsuit alleging that she had been sexually harassed by the professor's comments. The court found that the professor's comments to fellow faculty about the colleague's affair were within the scope of his employment because the issue of consensual sexual relations between professors and students is an important one. The professor's motivation was not to spread gossip or defame the student, but to express concerns about professionalism and the university's integrity. *Shockley v. Svoboda*.

SEX IN THE CINEMA presents "Love Actually" on Tuesday, February 17, 2004 at 7 and 10 pm in the Price Center Theatre. This film is co-sponsored with the University Centers and Student Psychological and Counseling Services. This is a FREE showing!

Puzzled about sexual harassment? Solutions found here. Office of Sexual Harassment Prevention & Policy (OSHPP), 201 University Center, (858) 534-8298, <http://oshpp.ucsd.edu>.