

PUBLICATION

General Contractor Liable For Jobsite Harassment

Authors: Cameron Strawbridge Hill, Sr.

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Most of the time, you are focused on the many things that have to be done to finish a project. Ordering material. Coordinating trades. Watching costs. Holding to the schedule. With all of the responsibilities a project requires, it can be easy to overlook the obvious. It is people who get these projects finished, and the law protects them in many ways. One such way is explained by a recent employment law case arising out of a construction project in Louisiana.

A federal jury in New Orleans awarded \$451,000 in damages to a post-Katrina bridge repair worker in a sexual harassment lawsuit. The jury found that a supervisor committed same-sex harassment of a member of his crew and that the general contractor failed to exercise reasonable care to prevent and promptly correct sexually harassing behavior.

The United States Equal Employment Opportunity Commission (EEOC) filed suit on behalf of the worker, alleging his site superintendent "flashed" him and routinely taunted him about seeming feminine and homosexual. The EEOC brought claims against Boh Bros. Construction Co. under Title VII of the Civil Rights Act of 1964, alleging that it discriminated against the worker because of his gender by subjecting him to sexual harassment and/or a sexually hostile work environment. The EEOC also alleged that after the worker complained about his supervisor's harassment, he was sent home for three days without pay, then transferred to another work site with a longer commute and less pay. His employment was ultimately terminated.

At trial, the EEOC's case partly focused on the fact that Boh Bros. had no explicit written policy in its employee manual regarding who to call to report harassment, had no procedure for dealing with harassment complaints, and had nothing in writing regarding the worker's complaint. Although Boh Bros. disputed those allegations, the jury agreed with the EEOC.

At the end of the three-day trial, the jurors agreed that the worker suffered harassment, but not retaliation. The jury awarded the worker only \$1,000 in damages for back pay and benefits, but another \$200,000 for emotional pain and suffering and another \$250,000 for punitive damages. The Court will soon address what type of injunctive relief, if any, should be imposed on Boh Bros., as well as the amount of the EEOC's attorneys' fees it will have to pay.

Boh Bros. is expected to appeal these findings. But in light of this decision, all construction companies would be well served to review their sexual harassment policies and procedures. Procedures for reporting harassment should be well-documented and communicated to all employees. In addition, supervisors should understand the policies, ensure that any investigations are well-documented, and make sure the results of those investigations are communicated to the complaining employee.

I want to thank Steve Griffith and Erin Pelleteri of our New Orleans office who brought this case to our attention.