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Injunctive Relief in Sexual Harassment Cases: Remedies Beyond Money

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In sexual harassment cases, in addition to monetary damages, victims often seek "injunctive relief" – in other words, an order from the court that their employer or harasser either take or stop some action. Courts have frequently granted injunctive relief in harassment cases, and a recent decision from the U.S. Court of Appeals for the Eleventh Circuit highlights some of the relevant considerations in assessing whether such relief is appropriate.

Under Title VII of the Civil Rights Act of 1964, the federal law that prohibits workplace sexual harassment and many other forms of workplace discrimination, "[i]f the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate."[i] Many state and local anti-discrimination statutes similarly permit injunctive relief.[ii] Federal courts have broad equitable powers that allow them to fashion a wide variety of relief for violations of Title VII.[iii] However, "injunctive relief is designed to deter future misdeeds, not to punish past misconduct."[iv] Thus, before granting injunctive relief, courts generally require a plaintiff to provide evidence that there exists real danger of a recurrent violation.[v] In making this determination, courts consider, among other things: (1) the bona fides of the defendant's expressed intent to comply with the law; (2) the effectiveness of the discontinuance; and the character of the past violations.[vi] Furthermore, courts routinely hold in individual cases that the plaintiff must show that she would benefit from the injunctive relief she seeks, so she ordinarily must still be in the workplace the court's order is designed to regulate.[vii]

Examples of Injunctive Relief in Harassment Cases

When plaintiffs have been able to meet these standards, courts have devised a broad array of remedial injunctive relief. Perhaps the most common form of injunctive relief in harassment cases is an order requiring that the employer develop and implement anti-harassment policies.[viii] Courts have also "found to be appropriate injunctions enjoining employers from employing individuals found liable for Title VII violations and from allowing such individuals to enter the employer's premises."[ix] Indeed, the U.S. Court of Appeals for the Second Circuit found that a district court had abused its discretion when it refused to issue an order in accordance with a verdict in which the jury determined the company should be prohibited from directly employing the harasser in the future and from permitting the harasser to enter its premises.[x]

Other courts in recent years have also declined to dismiss claims for injunctive relief that

sought an order requiring a company to install monitored security cameras and to terminate certain employees;[xi] refrain from changing the plaintiff's schedule;[xii] and subject themselves to additional regulatory scrutiny.[xiii]

Appeals Court Clarifies Standards for Injunctive Relief

The U.S. Court of Appeals for the Eleventh Circuit revisited the standards governing injunctive relief available to victims of workplace sexual harassment in a recent decision. In *Furcron v. Mail Centers Plus, LLC*,[xiv] the Eleventh Circuit reviewed an appeal in a case involving Myra Furcron, an employee of Mail Centers Plus, LLC ("MCP"), whose supervisor had sexually harassed her and, after she complained, fired her. Furcron filed a complaint asserting that the actions of MCP violated Title VII and prevailed at trial on the merits. At trial, the court ordered the company to "(1) implement a new training program to train management on how to deal with Title VII harassment cases and (2) include a copy of the verdict in Furcron's personnel file, if MCP also included documents relating to Furcron's termination in her personnel file."[xv] The company appealed on the basis that Furcron would not personally benefit from the orders as she was no longer an employee of MCP.

The Eleventh Circuit agreed in part with MCP's argument, noting that "in a Title VII action brought by an individual plaintiff, the plaintiff must be part of the class that will benefit from any injunctive relief awarded."[xvi] Thus, because Furcron would not benefit from the proposed training program, it was not an appropriate injunctive remedy. However, the court rejected MCP's appeal with respect to her personnel file, noting that "Furcron would benefit from having those documents included in her file to provide the full context of her employment."[xvii]

As these cases demonstrate, the standards for fashioning injunctive relief in sexual harassment cases are flexible and allow creative remedies, but there are legal constraints on the availability of such relief. Ultimately, there are few bright lines about whether certain types of relief are available; instead, the determination requires a fact-specific inquiry about whether such relief would be appropriate and effective for a particular plaintiff in a particular dispute. Many harassment victims seek assurances that their harasser will be fired so they can continue to work without fear of further abuse or retaliation. The Eleventh Circuit would not have considered such relief appropriate in *Furcron* since the plaintiff no longer worked for the defendant, but in many cases where the plaintiff remains employed, the termination of a proven harasser might be considered an appropriate remedy. As with many questions in employment law, the answer to whether a particular injunctive remedy is appropriate varies greatly from case to case depending on the specific circumstances.

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[i] 42 U.S.C. § 2000e–5(g)(1).

[ii] *See, e.g.*, 43 Pa. Stat. § 962(c)(3); N.Y.C. Admin. Code § 8-502(a).

[iii] *Bouman v. Block*, 940 F.2d 1211, 1233 (9th Cir. 1991).

[iv] *Orantes–Hernandez v. Thornburgh*, 919 F.2d 549, 564 (9th Cir. 1990).

[v] *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953).

[vi] *Id.*

[vii] *See, e.g., Carmichael v. Birmingham Saw Works*¸738 F.2d 1126, 1136 (11th Cir. 1984).

[viii] *See, e.g., E.E.O.C. v. Prospect Airport Servs., Inc.*, No. 2:05-CV-01125-KJD, 2012 WL 3042693, at *3 (D. Nev. July 25, 2012) ("Defendant Prospect will develop, implement, and distribute to all employees an AntiHarassment Policy regarding sexual harassment in all of its facilities."). In *Prospect Airport Servs.*, although the individual who was harassed no longer worked for the company, the court determined that injunctive relief was permissible because the EEOC had demonstrated that the defendant did not have appropriate policies for responding to harassment complaints. When the EEOC is the plaintiff the relief it seeks is considered to be in the public interest regardless of whether the original charging party remains employed by the defendant.

[ix] *See E.E.O.C. v. United Health Programs of Am., Inc.*, 350 F. Supp. 3d 199, 220 (E.D.N.Y. 2018).

[x] *See E.E.O.C. v. KarenKim, Inc.*, 698 F.3d 92, 101 (2d Cir. 2012).

[xi] *See Carey v. O'Reilly Auto. Stores, Inc.*, No. 18-81588-CIV, 2019 WL 3412170, at *10–11 (S.D. Fla. May 31, 2019).

[xii] *See Huynh v. Northbay Med. Ctr.*, No. 2:17-CV-2039-EFB PS, 2018 WL 4583393, at *4 (E.D. Cal. Sept. 25, 2018).

[xiii] *See Prospect Airport Servs.*, *supra* note 8, at *4.

[xiv] 774 F. App'x 592 (11th Cir. 2019).

[xv] *Id.* at 595.

[xvi] *Id.* at 596.

[xvii] *Id.* at 597.