

MEDICAL RESIDENT CAN SUE FOR SEXUAL HARASSMENT UNDER TITLE IX


By: Karen L. Piper, Member, Workplace Law Practice Group

Jane Doe was accepted into a medical residency program at a medical center affiliated with Drexel University's College of Medicine in fall 2011. As required by the residency program, Doe attended morning lectures and afternoon case presentations, attended a mandatory physics class, attended monthly lectures, and sat for annual examinations to assess her progress and competence.

Doe complained several times that the director of the residency program sexually harassed her and retaliated

against her for complaining about his behavior. When she complained to Human Resources, Doe was referred to a psychiatrist. In April 2013, Doe complained again and was again referred to a psychiatrist. The psychiatrist told Doe that all of the other residents loved the director and Doe should apologize to him. Doe did, but the director said her apology was not sincere. He recommended that Doe be dismissed from the residency program and she was.

Exactly two years later, in April 2015, Doe sued the medical center in federal district court in Pennsylvania under Title IX of the Education Amendments of



1972. Title IX prohibits discrimination on the basis of sex by an education program or activity that receives federal financial assistance. The district court dismissed the case because it considered

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Doe an employee. It ruled Doe should have filed a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”) and then filed her lawsuit under Title VII like any other employee.

The United States Court of Appeals for the Third Circuit (which covers Delaware, New Jersey, and Pennsylvania) reversed. It agreed that Doe was an employee but ruled she could sue under Title IX because the medical residency program was an education program or activity that received federal financial assistance in the form of Medicare payments. The Third Circuit Court reinstated Doe’s retaliation and quid pro quo sexual harassment claims because

Doe was dismissed from the residency program within two years before she filed suit. Doe’s hostile environment claim was time-barred because the alleged harassment did not occur within two years before she filed suit. *Doe v Mercy Catholic Medical Center* (3rd Cir. March 7, 2017).

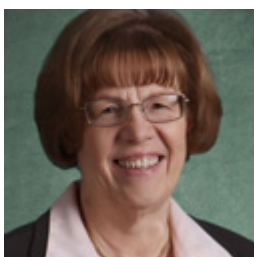
The Third Circuit’s decision in this case is consistent with decisions in the First Circuit, Sixth Circuit (covering Michigan, Ohio, Kentucky and Tennessee) and Fourth Circuit but contrary to decisions in the Fifth and Seventh Circuits. The latter courts have ruled that Title VII is a medical resident’s exclusive means of recourse for sex discrimination or harassment. As a result of the split of opinions, this case may be headed to the United States Supreme Court.

This case involved a hospital residency program. However, the decision that Title IX provides an alternate procedure for suing for sexual discrimination or harassment, which procedure provides a longer time period in which to file a claim and does not require the employee to file a claim with

the EEOC first, could be extended to all hospitals and healthcare institutions which provide teaching and training programs, plus other educational institutions, e.g., colleges and universities, which receive federal financial assistance.

Also noteworthy is the fact that Human Resources referred the individual who reported alleged sexual

harassment to a psychiatrist when she first complained. While providing an employee with counseling might be part of an employer's remedial action, that does not appear to be the case here. Here, the psychiatrist told Doe she should apologize to the alleged harasser for complaining about him. This was bad advice.



About the Author. *Karen L. Piper represents and counsels employers on employment law issues. She has conducted a number of employment investigations and training seminars for a variety of clients and has also successfully defended numerous discrimination and wrongful discharge cases at the administrative, trial, and appellate levels. Karen is a frequent speaker and writer for national and local industry associations.*

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