



# Florida EMPLOYMENT

A monthly newsletter designed exclusively for Florida employers

## LawLetter

Vol. 19, No. 1  
March 2007

G. Thomas Harper, Editor  
www.HarperGerlach.com

### SEXUAL HARASSMENT

#### **Prison nurses awarded \$990,000 because of hostile work environment**

On January 26, a jury in Panama City awarded damages to 12 nurses who worked at the state prison in Washington County, Florida. The nurses claimed they had asked the Florida Department of Corrections (DOC) to protect them from sexual harassment by inmates. Apparently, the eight-person jury believed that the DOC failed to take appropriate steps to protect the nurses from their patients.

Although health care providers must subject themselves to many less-than-desirable situations to effectively treat their patients, this case demonstrates the limits of charitable expectations. Certainly, it can be anticipated that such an employment setting might require the nurses to ignore certain language and conduct so that they could care for their patients. It is incumbent on management, however, to control the work environment to the best of its ability. Here are the gruesome facts.

#### **Not in my job description**

The nurses sued the DOC because it permitted male inmates to openly masturbate at them and utter sexually explicit comments during their rounds to provide health care services to the inmates. They complained that the men were permitted to stand on toilets or rolled up mattresses beside their cell doors so the nurses would see them masturbating directly at them. According to the nurses, when they entered the inmates' dormitory, the inmates would make sexual remarks and comments about the nurses' bodies. They alleged that the inmates would regularly fake emergency calls to sexually harass them.

The nurses said that they complained to correctional officers and were ignored. They were even allegedly discouraged from writing disciplinary reports on the inmates and said that some reports were destroyed. In a memo

from David L. Thomas, the DOC's director of health services, the nurses were told that it was "far more appropriate for correctional officers and non-health service employees to do disciplinary reports, and other forms of punishment." The nurses complained that little or no action was taken and prison officials even told them that the prison was the inmates' "home," and therefore, the conduct couldn't be stopped. When repeated pleas for help were ignored, the nurses testified they tried different approaches to handling the problem, including putting paper and curtains on the windows of the cell doors so they couldn't view the inmates.

After writing to no avail to the secretary of corrections, Michael Moore, the nurses filed suit in federal court

### What's Inside . . .

<b>Negligent Hiring</b>	
Could store be liable to robber injured when apprehended by employees? .....	2
<b>Workplace Issues</b>	
Daylight-saving time comes earlier this year — make sure your time clock is ready .....	3
<b>Employment Discrimination</b>	
EEOC's suit may get employee around arbitration agreement's restrictions .....	4
<b>Tribal Issues</b>	
NLRB says Native-American reservation gaming operations must abide by NLRA .....	5
<b>Workers' Compensation</b>	
Seven tips to help you control workers' comp costs .....	5
<b>Health Insurance</b>	
HRhero.com survey shows employers are holding steady on health insurance benefits .....	7

[www.HRhero.com](http://www.HRhero.com)



in Panama City. On January 26, 2007, the jury awarded them a total of \$990,000 for their emotional pain and mental anguish because the DOC allegedly created or permitted the sexually hostile working environment to exist.

We haven't seen the end of this type of case, however. Nurses have filed suit against the DOC in other parts of the state as well. Those cases are pending in the U.S. District Courts for the Middle and Southern Districts of Florida and are set for trial in April and July of this year. Isn't it great to see our tax dollars at work like this!

### Lessons learned

Not really your normal work environment, you say? That's right. But bad facts like these make law and precedent that the rest of us will have to live by. This case is still hot off the presses, and a lot of things can happen before the ink finally dries.

When this issue of *Florida Employment Law Letter* went to press, the DOC still had time to appeal the jury verdict. And obviously, juries in the other courts may reach a different result than the jury in this case. But one thing is clear. No matter what type of business you run, ignoring a problem won't make it go away.

In this case, it appears from the limited facts available that the nurses filed suit only after repeated attempts to remedy the situation internally. Regular supervisor and employee training and use of a proper policy will help prevent problems and serve to shield your company from suits. When investigating harassment claims, always ask the complaining person what he wants to see happen. You don't have to grant the request, but if he doesn't offer a solution, it makes your action easier to defend. ❖

### NEGLIGENT HIRING

## Robber sues store for injuries caused by employees apprehending him

*What nerve! Can a criminal prevail in a case in which he sues for injuries he sustained while committing a crime? Although gut intuition says no and, in fact, Florida law certainly limits employer and individual liability for any such injuries, this case highlights the necessity of proper pleading and court findings in any civil lawsuit. Let's take a look at what actually happened.*

### Not on my watch

George Copeland entered an Albertson's store, brandished a knife, robbed a clerk, and fled the premises. Upon being alerted to the robbery, other employees ran out of the store in search of Copeland. They caught him in the parking lot and apprehended him. The Albertson's employees contended Copeland threatened them with his knife and they merely tried to restrain him and protect themselves. Copeland contended he was beaten, jumped on, and kicked. Police officers arrived within minutes and arrested Copeland. He was later tried and convicted of armed robbery and aggravated assault.

Donning the hat of jailhouse lawyer, Copeland filed a civil lawsuit against Albertson's and individual employees alleging they were negligent in a number of ways, including negligent hiring and training of the Albertson's employees. Albertson's and the employees eventually requested summary judgment (dismissal without a trial) because of a lack of evidence since he admitted he couldn't recall anything about the incident because he had been in an alcohol-induced blackout at the time of the crime. The trial court dismissed the case, and Copeland appealed to Florida's Second District Court of Appeal.

### No good deed goes unpunished?

The appellate court reversed the decision and sent the case back to the trial court for a number of reasons. Albertson's and the employees had argued in their memorandum in support of summary judgment that Copeland's claim for



**2007 Strategic HR Leadership Summit**  
Insights from Industry Experts  
March 22-23 • Caesars Palace, Las Vegas

Join America's top HR experts, including top leaders from Microsoft, Merck, Harrah's, Tyson Foods, Starbucks, U.S. Olympic Committee, Heineken USA, Mellon Financial, Peopleclick, and more for 2 days of best-practices, bottom-line boosters, and tested methods for delivering tangible solutions to a wide range of organizational challenges.

This 3rd annual event features keynotes you won't hear anywhere else:

- Reducing office politics sparked by multigenerational turf wars
- Stopping the female and minority executives brain drain
- Delivering the numbers top management demands
- And much more

**Full details at [www.HRhero.com/summit](http://www.HRhero.com/summit) or call 800-274-6774**