

The Washington State Supreme Court Finds Employers are Directly Liable When Their Employees Sexually Harass Members of the Public

by Aaron Goldstein

Last week, the Washington Supreme affirmed the Court of Appeals in *Floeting v. Group Health Cooperative*, finding that employers are directly liable when their employees sexually harass members of the public under the Washington Law Against Discrimination (WLAD).

Under RCW 49.60.215, it is unlawful for “any person or the person’s agent or employee to commit an act” of, among other things, discrimination in a place of public accommodation. Sexual harassment is treated as a form of sex discrimination under WLAD. The court’s analysis focused, in part, on whether sexual harassment standards that apply between employees and employers should be extended in the context of public accommodations. The Supreme Court said “no,” reaffirming and imposing a strict liability standard on discriminatory conduct of employees in a place of public accommodation.

Christopher Floeting was a Group Health patient who sued the facility claiming an employee repeatedly sexually harassed him while he was seeking medical treatment. Before suing, he filed a complaint with Group Health, who investigated the matter, and ultimately terminated the employee’s employment.

Group Health argued that workplace sexual harassment doctrines should be imported into the public accommodations context, which would have limited employer liability. It argued that like employee-to-employee sexual harassment, the employer should only be liable where it authorized, knew, or should have known of the discriminatory conduct and failed to do anything about it.

The court rejected that argument and the dissent. It held that Floeting’s claim was more like a consumer claim than a claim between an employee and his employer. The court analogized the sexual harassment of members of the public to employees turning customers away because of their race, religion or sexual orientation. It therefore held that

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Floeting's claim could not be limited by the employment discrimination statute.

The court further held that a single discriminatory act in a place of public accommodation could violate WLAD. This is a strict liability standard, meaning it does not depend on proof, negligence or intent. In this case, even if Group Health did not participate in the discrimination, and was not negligent in training or supervising its employees, it could still be liable.

The decision serves as a stark reminder for Washington employers who are places of public accommodation. As the court explained, the only defenses available under WLAD are that (1) the discrimination did not happen at all, or (2) the person who committed the discrimination was not an agent or employee. Employers should incorporate the lesson from last week's decision in staff trainings, and remind employees, including managers and supervisors, of the strict standards under the law.

A copy of the decision can be found here: <http://case.lawmemo.com/wa/Floeting1.pdf>