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Published by:
RICHARD K. CITRON
DAVID R. DEUTSCH
MICHELLE LeCOLST-JOHNSTON
Attorneys

CALIFORNIA SUPREME COURT GRANTS EMPLOYEES THE RIGHT TO SUE FOR SEXUAL FAVORITISM

In a significant expansion of sexual harassment law in California, the California Supreme Court held, in Miller vs. Department of Corrections, et al, that any worker, male or female, has a claim for sexual harassment by showing that there was widespread sexual favoritism which created a hostile working environment, regardless of whether the employees who were granted favorable treatment willingly bestowed their sexual favors. Previously, a supervisor who granted favorable employment opportunities to an employee with whom the supervisor was having an affair did not commit sexual harassment toward other employees. Now, an employee can show sexual harassment even if his or her supervisor never asked for sexual favors or made inappropriate sexual advances.

In the Miller case, a prison warden was engaged in consensual sexual affairs with three subordinate employees, and granted unfair promotions, special work assignments, and other employment benefits to these employees. One of the benefits was the power to abuse other employees who complained about the affairs. There was also evidence that the advancement of employees at the prison was based upon sexual favors, not merit. The warden's sexual favoritism blocked the way to merit-based advancement for other employees.

The Court held that the widespread favoritism created an atmosphere that was demeaning toward women, and a hostile work environment. The Court further agreed with an EEOC policy statement that an atmosphere that is sufficiently demeaning to women may be actionable by both men and women.

The Court noted that an isolated instance of favoritism on the part of a supervisor toward a female employee with whom the supervisor is conducting a consensual sexual affair would not ordinarily constitute sexual harassment; however, when such sexual favoritism is widespread, it may create an actionable hostile work environment in which the demeaning message is conveyed to female employees that they are viewed by management as "sexual playthings" or that the way to get ahead is by engaging in sexual conduct with their supervisors or those in management. The Court stated that "mere office gossip" would be insufficient to establish the existence of widespread sexual favoritism.

A spokesman for Attorney General Bill Lockyear stated that California employers will now be more vulnerable to employee lawsuits. It is expected that California employers will now have to pay more attention to office romances and may seek to regulate relationships between a supervisor and his or her subordinate.