

“that’s what she said”

a ford & harrison blog about the popular television series “the office”

Funny Business

November 11, 2011 - by: [Joshua Drexler](#)

Litigation Value: minimum \$300,000 if Dwight is retained. Once again, Dwight Schrute illustrates well what it means to “cross the line” while at work. He even raised the bar on inappropriate behavior at the Scranton branch, a feat we heretofore believed impossible. For those of you who missed this week’s episode, I’ll briefly describe.

Pam becomes fixated on whether Jim is attracted to a new employee, Kathy, who is training to replace Pam temporarily while she is out on maternity leave. Jim vigorously denies any such attraction, but Pam ultimately slides into a state of paranoid lunacy. She makes a deal with the devil to learn the truth at all costs – unleashing Dwight for the task. At that point, we knew we were in for a good time. Give Dwight free reign to do anything and you will not be disappointed. Or, I should say, we will not be disappointed as the antics ensue.

Dwight is, as they say, results-oriented. The method is irrelevant so long as it accomplishes the goal. And he is not prone to waste time. He goes straight to the source for his information. And go to the source he did.

Dwight, armed with the knowledge that men become erect when aroused, sees Jim and Kathy laughing, and logically concludes that Jim must have an erection. He then calculates that by grabbing Jim’s penis, the truth shall be revealed. Simple. Efficient. Logical. Dwight wastes no time and dives for Jim’s crotch. On his first go, however, he misses – or at least doesn’t quite get the grasp that he was looking for, so he struggles with Jim and lunges at him a second and third time until he finds purchase. Dwight, surprised by his findings, retreats and asks Pam if Jim is prone to soft erections.

<http://blogs.hrhero.com/thatswhatsheaid/>

Clearly, the Scranton branch needs a sexual harassment refresher course. Aside from failing to make any attempt to stop Dwight, no one reported anything to Andy. A company can theoretically be held liable for one instance of harassment if it is sufficiently severe. As stated by one court, the “required level of severity or seriousness varies inversely with the pervasiveness or frequency of the conduct.”

If Jim sued, while he theoretically could prevail based on one instance of harassment, most likely he would lose. If Jim could show that Dunder Mifflin/Sabre had somehow contributed to the incident or had the power to avoid it but didn't, that would help his case. Jim could argue that the company was responsible for fostering the environment that made the incident with Dwight possible by failing to provide training and turning a blind eye toward past occurrences involving other employees. Again, this would be a difficult argument.

The company, however, is seriously rolling the dice by continuing to employ Dwight. (OK, I know, that's a vast understatement.) Due to the severity of the incident, if another occurs, Jim would almost certainly succeed in a lawsuit, especially if he reports this incident to Andy. Moreover, the company would be vulnerable to a negligent retention claim if it learned of the conduct and retained Dwight. Due to the severity of this misconduct and the number of witnesses, if Andy discovers what occurred, the only prudent course of action available to him is the termination of Dwight's employment. As always, let's hope no one at the Scranton branch suddenly becomes prudent.