

A Valentine's Day Bouquet Of Sexual Harassment Cases

By [Robin E. Shea](#) on February 10, 2012

Ah, February! The month of love! Of course, if you're a lawyer, you see the worst of humanity and never get to hear about true, faithful, honorable, self-sacrificial love -- sexual harassment is as close to "love" as we ever get. (See, you thought lawyers were just jerks - now you feel sorry for us!)

So, in honor of St. Valentine's Day, this is the best I can do. Here are three recent sexual harassment cases, each with a moral for employers. That's three cases, and three morals.

Hey! Did you know that $3 \times 3 = 9$? And three 9s = 9-9-9? [I miss Herman Cain!](#)

[Here comes Doctor Love!](#) In the [first case](#), the plaintiff, a nurse, had an affair with a married doctor. She admitted that, while the affair was going on, she told everyone in the world about it, and she and the doctor had some "encounters" in the workplace. He promised that he was going to leave his wife, but finally admitted that he'd been lying about that, so the plaintiff told him to hit the road. (*Or, did she?*)

The plaintiff now told everyone in the world that the relationship was over, but her beloved doctor, holding fast to the hope that he could continue to have his cake and eat it, too, kept sending her romantic text messages and trying to touch her. As the court tactfully put it, "As a result, she *sometimes* avoided him at the office." (Emphasis added.) She apparently had an opportunity to transfer to another department away from him but turned it down.



Finally, the plaintiff sent a letter to her employer saying she wanted to continue working with "Doctor Love" but only in a professional way. She said that she wanted to be treated "as any other employee . . . no better and no worse."

The employer brought in an attorney to investigate her allegations of "sexual harassment," and then offered her two choices: quit, or be fired for disruptive behavior and having sex on the employer's premises.

The nurse chose to be fired (the doctor was fired, too), and she brought a number of claims against the employer, including sexual harassment, sex discrimination, and retaliation. The court granted summary judgment to the employer, saying that the doctor's post-breakup text messages were not objectively harassing even though they might have been annoying and "distressing." (The decision quotes the messages, and they really do





seem fairly tame in the context of a breakup.) There was no retaliation, the court said, because a "plan" to get rid of her was not an adverse employment action. She lost on her other claims because she didn't even address them in her response.

MORAL: I actually have two morals from this case: a moral for women, and a moral for men. (Roles may be changed as appropriate.)

Ladies, if you get mixed up with a married man who lies to you about getting a divorce, call him a cad and dump him, but don't accuse him of sexual harassment if he didn't sexually harass you. And by no means sue your employer, an innocent bystander, for the consequences of your folly. If you don't care about doing the right thing, care about the fact that *you will lose your case* because all of your co-workers, who know you were having a consensual affair, will testify against you. Better to shake the dust from your feet and move on. [Remember how happy Kirstie Alley was after she forgot about that rotten George Segal and married John Travolta?](#) Do that.

Gentlemen, I've said this before and won't ever stop: 99.9 percent* of sexual harassment lawsuits result from a failed extramarital affair. Like our "Doctor Love," by having an affair at work you may make yourself vulnerable to a lawsuit, lose your job, and have to [drop out](#) of the presidential race (or at least have a [severe gender gap](#) in support for your candidacy). You will also have some explaining to do at home. Always remember that ["a relationship is like a porcelain nail. If it breaks, you can put it back together again but it will never be the same unless you make a commitment and don't sleep with nurses!"](#)

**Completely made-up statistic, but true nonetheless.*

Lewdity and crudity, but no dudity. In our second case, the plaintiff, a female, had been friends with a co-worker, also female, who was sometimes an "acting" supervisor. At some point the friendship ended. The acting supervisor (we'll call her "Doris") was undisputedly lewd and crude (since this is a family blog, I won't give the gory details here, but [you can read the decision](#) if you must). The plaintiff was not squeaky clean either, and had talked about her sex life to Doris, and had been reprimanded for sending an inappropriate cartoon email, but this all occurred while the two women were still friends. After numerous complaints by the plaintiff and others, the employer suspended Doris for "mooning," and when she returned to work, the plaintiff didn't have to work with her any more.

- Problem solved, huh? *No!* The plaintiff sued the employer anyway, for sexual harassment under federal and Kentucky state law. The employer moved for summary judgment, but the court is allowing the case to go to trial. Although the plaintiff's conduct hadn't been exemplary, it was far less severe than Doris's conduct. And, even though Doris was a sleaze with men, too, the evidence indicated that she was much, much worse with women. There was even an issue of fact regarding whether Doris was a "supervisor." And, because of the numerous

- complaints by the plaintiff and others about Doris's behavior, most of which were pooh-poohed by the employer, the court found that the issue of the employer's response should go to a jury.

MORAL: Same-sex harassment can be just as severe as opposite-sex harassment, and sometimes worse. Employers minimize or ignore complaints about this type of behavior at your peril. Also, don't be afraid that you'll be guilty of "discrimination" if you take appropriate action against an alleged harasser who is gay. The laws against sexual harassment apply to everyone.

Even an exotic dancer has the right to say no. [In our third case](#), the plaintiff worked at a convenience store and was aggressively pursued by her store manager. When she declined his advances, he cut back on her work hours, allegedly "forcing" her to get a second job as a part-time exotic dancer. His advances and retaliatory behavior escalated, her complaints to higher management were ignored, and she was finally fired for taking money out of the cash register (she said she was only making change) and closing the store for 10-15 minutes (she said it was necessary for safety reasons).

After she sued the employer for sexual harassment, the employer tried to argue that her boss's bad behavior was based on her "exotic dancer" job, not sexual harassment. Nice try, said the court. First, there was evidence that the behavior began before she got the job as an exotic dancer. (Remember she said she took the dancing job because he cut back her work hours at the store after she rejected his advances.) Second, his behavior was clearly based on her sex, whether it started after or before she became a dancer.

However, the defendant did get summary judgment on her state-law tort claims because, under Maryland law, sexual harassment is not in the course and scope of employment. (In many states, these claims would also have been allowed to go to trial.)

MORAL: I have two morals from this case, too.

To all sleazebags, nobody -- *but nobody* -- is "fair game." Don't think that somebody's part-time or past employment, style of dress, choice of significant others, or sexual past means they're "available." Even if she's slept with everyone at your office and you can definitively prove it (doubtful, but just for the sake of argument), she still has the right to say no to *you*. If she says no, let it go, and treat her the same way you would treat any employee that you aren't trying to hit on.

To employers, even employees with a "history" can have valid complaints of sexual harassment. Don't ignore or minimize harassment complaints for any reason, including but not limited to any of the reasons listed in the preceding paragraph. Take all allegations of harassment seriously, respond to them promptly, investigate them thoroughly, and take the action that is appropriate under the circumstances.



Now go out and buy your *true* love some flowers (from a florist, not the supermarket), and have a happy Valentine's Day!

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