

## **Illinois Supreme Court Greatly Expands Employer “Strict Liability” for Sexual Harassment**

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### **What is “Strict Liability”?**

On April 16, 2009, The Illinois Supreme Court, in the decision of *Sangamon County Sheriff’s Department v. Illinois Human Rights Commission*, expanded the Illinois Human Rights Act (IHRA), finding that an employer is “strictly liable” for a supervisory employee’s harassment of an employee, even where no direct supervisory relationship exists. Yes, “strict liability” is as bad as it sounds. “Strict liability” prevents an employer from raising any defense to a claim, even in situations where the employer had no actual knowledge of the existence of prohibited conduct, or even where they did have knowledge and subsequently took reasonable corrective actions to address it.

Historically, Illinois law based an employer’s liability for “hostile environment” sexual harassment on the harasser’s status relative to the complainant. Supervisory status generally required that the harasser exercised some degree of control and / or authority over the person being harassed. However, in light of the *Sangamon* decision, Illinois employers will now be held “strictly liable” for the harassing conduct of any supervisory employee in the workplace over any employee, regardless of whether a direct supervisory relationship is present between the two parties or not.

### **Why Should Illinois Employers Care?**

Prior to the Sangamon County decision, Illinois law (as Federal Law still does), recognized a distinction between types of supervisory employees in situations involving sexual harassment in the workplace. The first category included direct supervisory relationships, wherein a supervisor has authority or influence to affect the terms and conditions of another’s employment. The second category consisted of all supervisors not in the direct or chain of command supervision of a complainant. The Illinois law previously held employers “strictly liable” only for harassment by a direct supervisor. If such a direct supervisory relationship could not be established, then that supervisor was placed in the class of all other employees who were considered “co-employees”. Employers previous to the *Sangamon County* decision were not held “strictly liable” for the harassing conduct between “co-employees” if they did not have knowledge of that conduct, or if they did but took reasonable corrective measures to address it.

### **What Should Employers Do Now?**

Although this decision greatly increases the universe of instances where Illinois employers may be held “strictly liable” in the area of “hostile environment” sexual harassment, certain procedures and processes should still be seriously considered to be implemented within an organization. First, it is prudent to continue to have appropriate anti-harassment policies in place and to inform all employees of those. This, along with establishing an internal complaint procedure for employees to follow, may also serve to minimize employees seeking relief outside of the organization. This also provides employers with an opportunity to investigate and take reasonable corrective actions where necessary.

As stated, in situations where “co-employees” are involved, this can still be raised as a defense by an employer.

Additionally, employers should strongly consider providing pro-active training in this area. First, training for all employees, so everyone has the same information as to what constitutes prohibited conduct, how to report it in good faith and the possible consequences for engaging in such activities. This can only serve to minimize the number of instances which may occur. Also suggested is separate and specifically focused training for supervisory employees. Emphasizing this information to supervisors will increase their general awareness of what constitutes unacceptable conduct, assist them in identifying, preventing and reporting such activities and also be a deterrent for their own participation in such acts.

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