

New Case Increases Importance of Employer Investigations

Description

[Alicia J. Samolis](#), Chair of the firm's Labor & Employment Practice, shared insightful legal perspectives in a recent Rhode Island Lawyers Weekly feature regarding the controversial First Circuit Opinion ***Caruso v. Delta Air Lines, Inc.***, No. 22-1775. In the case, the First Circuit granted a summary judgment motion in favor of an employer on a claim by a flight attendant employee who alleged she was sexually assaulted by her co-worker pilot and later quit when the employer did not fire the pilot. The majority held that the employer could not be held liable for the alleged assault itself, as there was no reason for the employer to know that there was the risk of assault. In addition, the Court found that no claim should result from the employer's reaction to the complaint given that the employer conducted a reasonable investigation into the employee's allegations, which revealed that the complainant herself had no actual memory of any alleged assault due to intoxication.

The opinion is a win for employers on two fronts. First, it correctly applied the standard that when alleged harassment is between two co-workers, as opposed to a supervisor, the employer should not be liable for an alleged isolated harassing incident if there was no reason for the employer to know of a risk that the incident would occur. As explained by Alicia in the interview, assuming the opinion is not overturned, employers should feel more confident that, if there is not a second act of harassment [after the employer is on notice of a prior incident or particular risk factor], there very likely is no case [based upon the first, unexpected incident].

Second, as noted by Alicia in the interview, the employer's investigation was certainly not ideal in some respects, but the majority still found it to be reasonable. While many of the other attorneys interviewed in the article criticized the employer's investigative process and found the opinion to be faulty, Alicia recognizes that as a practical matter, investigations are often imperfect. In the day-to-day running of a business, human resources departments are often stretched thin, dealing with a multitude of complaints and employee issues. Alicia believes the majority understood that it is only fair that employers are not held to an unrealistically high investigation standard.

Interestingly, the employer's request to the hotel for its video and swipe data weighed in favor of the reasonableness of the investigation, even though the attempt to get the data failed and was somewhat futile given the employer had no control over the hotel. From the defense side, Alicia advised employers to think about making requests for information relevant to the investigation even if you're going to be told no, [as it] might help you out in the future to show that you have tried. Alicia notes that in addition to doing the investigation basics, such as speaking with the complainant, speaking with the alleged perpetrator, and speaking with any witnesses, taking additional measures to seek information and evidence from others helps employers avoid liability.

According to Alicia, obtaining dismissal at this early stage of a sexual harassment case is a true victory and signals that investigating co-worker harassment claims is worth employer time and energy. Employers are encouraged to consult with their employment counsel next time they are conducting a workplace harassment complaint to best position themselves to be victorious in any suit that is filed based upon the complaint.

The full interview is available here: <https://bit.ly/3ZQX3Yb> (subscription required)

Our [Employment & Labor](#) Practice Group is available to share insightful legal perspectives on how employers can use investigations to avoid liability for harassment claims. Please contact [Alicia J. Samolis](#)

to learn more.

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Date Created

October 9, 2024