

PETERS & LYONS, LTD.

ATTORNEYS AT LAW

7035 VETERANS BOULEVARD
BURR RIDGE, IL 60527

DONALD F. PETERS JR.
CHRISTOPHER P. LYONS

TELEPHONE (630) 887-6900
FACSIMILE (630) 887-6910
WWW.PETERSLYONS.COM

FOR IMMEDIATE RELEASE

Contact: Donald F. Peters Jr.
630.887.6901 (direct dial)
dpeters@peterslyons.com

ILLINOIS SUPREME COURT EXPANDS EMPLOYER LIABILITY FOR SEXUAL HARASSMENT CLAIMS

Burr Ridge, Illinois - (April 21, 2009). On April 16, 2009, the Illinois Supreme Court issued an opinion that will expand the scope of employer liability in sexual harassment cases brought under the Illinois Human Rights Act.

At issue was whether an Illinois employer could be held strictly liable for hostile environment sexual harassment by a supervisor to whom the harassment victim did not report. Strict liability means that the company could be held legally responsible for the supervisor's individual, but unauthorized actions. The Illinois Supreme Court agreed with the Illinois Human Rights Commission that there can be strict liability in these instances.

Donna Feleccia was a records clerk with the Sangamon County sheriff's department. Ms. Feleccia filed sexual harassment and retaliation charges against the sheriff's department and Ron Yanor. Yanor was a supervisor in the sheriff's department, but he was not Feleccia's supervisor and he had no authority over her.

Ms. Feleccia alleged that Yanor had engaged in several acts which created a sexually hostile environment, prohibited by the Illinois Human Rights Act. After a trial, the Illinois Human Rights Commission found that Yanor's actions made the sheriff's department strictly liable in the matter and awarded Feleccia damages. On appeal, however, the Illinois Appellate Court found that since Yanor was not Feleccia's direct or indirect supervisor, the sheriff's department should not be held strictly liable for Yanor's actions and should only be liable if it could be shown that the department knew about the misconduct but failed to take sufficient remedial action.

The Illinois Supreme Court exercised its discretion to review the decision of the appellate court. Justice Anne Burke, in writing the court's majority opinion (4-2 decision), construed the Illinois Human Rights Act to mean that *any* supervisor or manager could render an employer strictly liable for hostile environment sexual harassment, regardless of whether the employer knew of the situation and appropriately corrected it.

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This is in contrast to the federal law principle in these cases, where an employer is not strictly liable when the supervisor creating the sexually hostile environment is not part of the chain of command above the alleged victim. In those circumstances, federal law requires a showing that the employer knew or should have known of the hostile environment and did not take appropriate remedial action.

Dissenting justices Karmeier and Justice Garman argued that the long standing federal law principal should be applied here. Namely, that in cases of alleged harassment by a supervisor who had no authority over the alleged victim, the federal law rightly views that person as similar to a non-supervisory co-employee; i.e., without strict liability attaching.

The Illinois Supreme Court's decision in this case therefore establishes that in cases of hostile environment sexual harassment brought under the Illinois Human Rights Act, the actions of any supervisor or manager make the employer strictly liable.¹

According to Donald F. Peters, Jr., a management-side labor and employment attorney with the law firm of PETERS & LYONS, LTD. in Burr Ridge, Illinois, the decision significantly expands the potential liability of companies for the misbehavior of supervisors. *“Especially in large businesses, where there may be hundreds of employees and many levels of supervision across the many divisions and departments of the company, this decision could have bizarre and unintended results. Illinois Employers may find themselves liable for the peccadilloes of a low level supervisor with an employee in an unrelated division, department or even location.”* Peters also observed, *“Decisions like this one again point out the urgent need for employers to thoroughly train all of its supervisors on the standards it expects of them, as well as the consequences for non-compliance.”*

Donald F. Peters Jr. is a partner in the law firm of PETERS & LYONS, LTD. in Burr Ridge, IL. Since 1971, the firm has concentrated its practice in representing employers in labor and employment law matters.

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¹ Sangamon County Sheriff's Department v. Illinois Human Rights Department et al. Opinion filed April 16, 2009 in Docket Nos. 105517-8.