

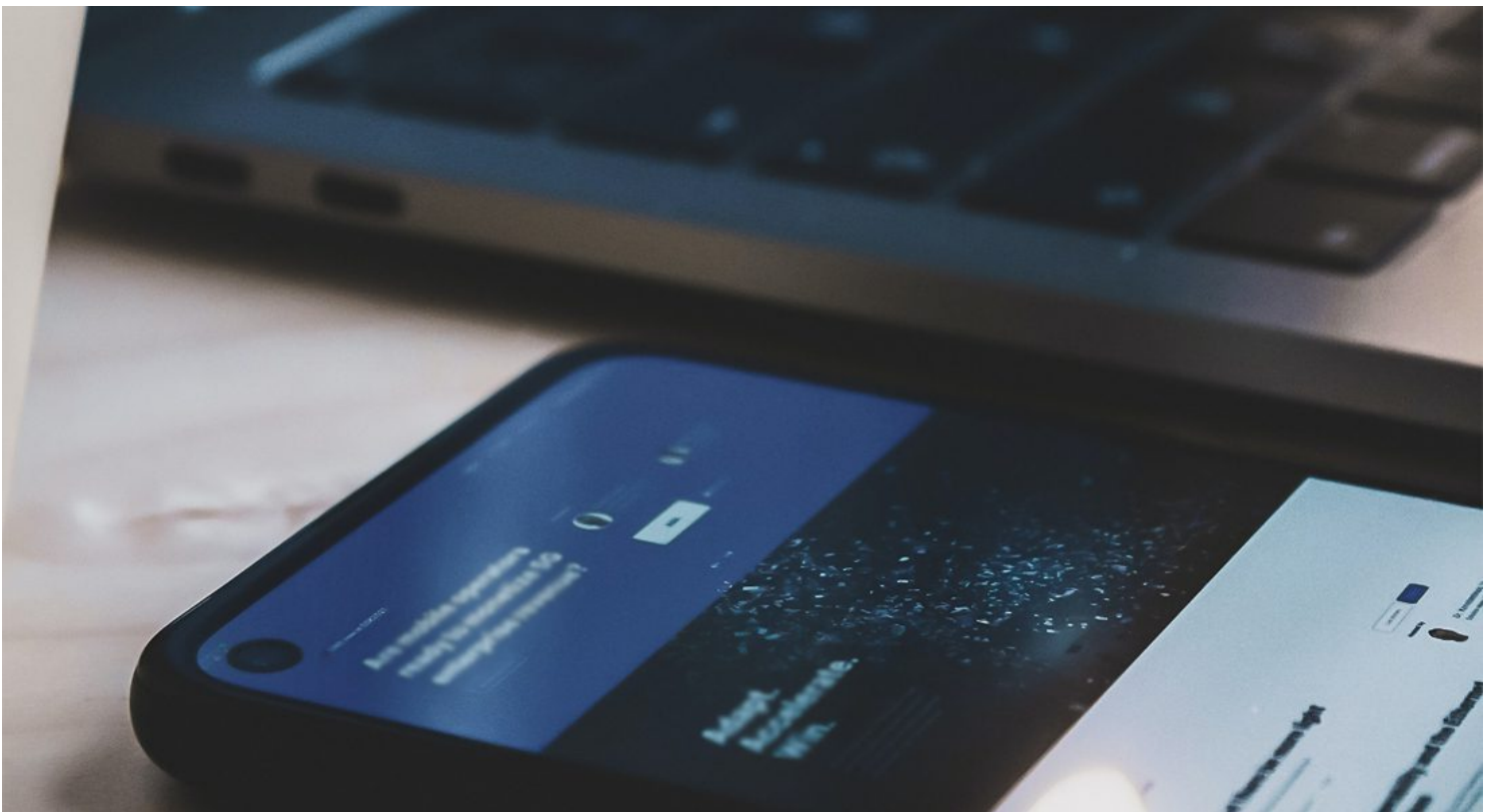
NEWS & INSIGHTS

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# Court Rules Patients Can Create Hostile Work Environment for Healthcare Providers

[INSIGHTSLEGAL UPDATE](#)

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A recent decision from the Fifth Circuit Court of Appeals reaffirms that employees can bring sexual harassment claims based on the conduct of non-employees, including patients. This decision reminds healthcare practices that patients can be the source of sexual harassment and stresses the importance of having appropriate policies and procedures in place to address reports of harassment, regardless of the identity of the alleged harasser.

## *Gardner v. CLC of Pascagoula*

In *Gardner v. CLC of Pascagoula*, a certified nursing assistant (CNA) at an assisted living facility claimed that an elderly resident with dementia created a sexually hostile work environment. The patient had a reputation and was known to leadership for groping staff members, making lewd comments and becoming physically aggressive when confronted. The CNA claimed she told her supervisor about being subjected to the patient's behavior daily. The CNA also claimed that in response to her complaints, her supervisor laughed, and the facility's administrator told her to "put her big girl panties on and go back to work."

The CNA began a 3-month period of leave after an incident with the patient that resulted in her leaving work and going to the emergency department. The CNA reported the patient tried to grope her, and ultimately punched her, while she attempted to help him attend a therapy session.

In an incident report, her supervisor documented that the CNA attempted to hit the patient, which the CNA denied. While leaving the patient's room, the CNA reportedly remarked, "I guess I'm not the right color," presumably because a white nurse was able to calm the patient whereas the CNA, a black nurse, could not. After the incident, the CNA told the facility administrator that she would not care for the patient anymore and asked to be reassigned; her request was denied.

The facility terminated the CNA's employment when she returned from her leave of absence following the incident, citing the reasons for her termination as:

- Her violation of the patient's rights (by making a "racist-type" statement)
- Insubordination (her refusal to care for the patient)
- Attacking the patient (her alleged attempt to hit the patient during the incident)

The CNA filed a Title VII lawsuit, which protects employees from workplace discrimination and harassment. Her claims were ultimately dismissed by the trial court after more than a year of discovery. The CNA appealed, arguing her claims for retaliation and a hostile work environment should have proceeded to a jury.

The appellate court reversed the trial court's ruling on the CNA's hostile work environment claim after finding the patient's conduct was sufficiently pervasive and severe enough to create a hostile work environment. The court's primary focus was whether the patient's conduct could form the basis for hostile work environment liability against the employer – and found that it could.

With this finding, the court distinguished prior cases holding a third party's verbal conduct could not give rise to employer liability, and held that "a jury could conclude that an objectively reasonable caregiver would not expect a patient to grope her daily, injure her so badly she could not work for three months and have her complaints met with laughter and dismissal by the administration." The case will head to trial.

A significant aspect of the court's ruling was its finding that the facility had control over the patient's conduct. It noted that nursing homes can avoid liability by taking actions such as "assigning a security escort, reassigning the victimized employee and offering to remove the patient from the facility." In fact, the court cited that as a result of the patient's conduct after the incident injuring the CNA, he had been transferred to an all-male facility.

## *Impact on Pennsylvania*

Although the Fifth Circuit does not decide cases in Pennsylvania, it applied federal law and can be persuasive that the conduct of non-employees can create a hostile work environment — even in the healthcare setting when the patient has known mental health issues.

Therefore, employers must be mindful that a prompt investigation and appropriate remedial action is necessary when an employee complains that the conduct of a third party — whom the employee is exposed to solely due to their position — has created a hostile work environment. In the event the employee's complaints prove to be true, the facility should consult legal counsel to ensure an appropriate response to the complaints.

Saxton & Stump attorney [Richard L. Hackman](#) is available to discuss how to prevent harassment in the workplace and how our [Labor and Employment Group](#) can assist in investigating claims and reviewing and drafting appropriate policies and procedures.

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