



Human Resource Executive Online

SUBSCRIBE E-NEWSLETTERS AWARDS COLUMNS MULTIMEDIA CONFERENCES ABOUT US RESEARCH

BENEFITS EMPLOYMENT LAW HR LEADERSHIP HR TECHNOLOGY TALENT MANAGEMENT

SEARCH | Advanced Search

HRE DAILY Getting Under Employees' Skin

New Focus on Flexibility

Benefits Founder's Next Act!

[Back to Search Results](#)

First Match

No Hugs Allowed?

A recent court ruling could have employers scrambling to address hugging and other physical contact in their employee training and handbooks, legal experts say.

By **Carol Patton**

Tuesday, March 28, 2017



Hugging employees is prohibited in the workplace.

This may become a new company policy, considering a recent ruling by the Ninth Circuit Court of Appeals -- in **Zetwick v. the County of Yolo (Calif.)** -- that reversed the grant of summary judgment in favor of the defendants and remanded the case for trial next year.

The plaintiff in this case -- Victoria Zetwick, a former sergeant at the county jail -- alleged the county sheriff, Edward Prieto, subjected her to more than 100 unwelcome hugs and at least one kiss between 1999 and 2011, which created a sexually hostile work environment. In 2012, she filed suit against the County of Yolo and Prieto, asserting claims of sexual harassment in violation of Title VII of the Civil Rights Act of 1964 and sexual harassment in violation of the California Fair Employment and Housing Act.

Initially, the district court sided in favor of the county, ruling that the plaintiff had failed to prove that the sheriff's conduct was both severe and pervasive, says Zetwick's counsel, Sacramento, Calif.-based Johnny Griffin.

"That was an incorrect legal standard," says Griffin, adding that the sheriff's conduct had to be severe or pervasive, not both.

He says the Ninth Circuit based its reversal on several factors: the totality of all the facts and circumstances were not considered; more weight should have been given to the fact that the alleged harasser -- the sheriff -- was her superior; that the district court can't quantify how many hugs create a hostile environment; and that after the sheriff learned of a second complaint and told by legal or HR to stop hugging employees, he still hugged Zetwick roughly six weeks later.

Griffin is hopeful that a settlement will be reached later this year. Meanwhile, he believes this court case presents minimal HR challenges.

"If I was advising HR leaders, I would say create a zero tolerance policy that's very simple -- no hugging in the workplace," says Griffin, adding that employees can still shake hands or possibly fist bump each other. "It's better to have a policy that you can manage than not have a policy and be sued."



Others believe the Ninth Circuit's decision pushes the boundary as to what types of cases warrant a jury trial and ignores social norms of socially acceptable behavior, including Aaron Goldstein, an attorney in the labor and employment group at Dorsey & Whitney, a Seattle-based international law firm.

"Most people would say giving someone a hug once a month on average and they don't tell you it's unwelcomed, is in the realm of being socially acceptable," he says. "HR departments need to be very careful to make sure employees realize that the line is low. You have to really keep your antenna up on your own behavior."

However, Goldstein found some of the actions of the Ninth Court "a little breathtaking," adding that it ignored a sworn statement by the plaintiff's coworker, which articulated that she was not offended or bothered by the sheriff's hugs. But the plaintiff disputed her statement, believing she was offended, which the Ninth Circuit supported, suggesting the coworker feared job retaliation.

The HR takeaway, he says, is to address this case in anti-sexual harassment training programs, especially those aimed at people in positions of authority who are the "nexus of all liability." He believes implementing a no-hugging workplace

Most Popular:

Viewed Shared

- What's Been Driving HR this Generation?
- The Case Against Engagement
- Why Isn't Employee Engagement Engaging Employees?
- 5 Ways to Address Negative Social Media
- Engagement is Still the Issue
- HR's Immigration Concerns
- Facebook's Bold Move

Learn how leading enterprises are realizing unexpected benefits with bswift.

READ THE SUCCESS STORIES

bswift

Great businesses are powered by great people.

See how >

with our purpose-built workforce solutions.

at people in positions of authority who are the nexus of an industry. He believes implementing a no-hugging workplace policy would be ineffective because it's unrealistic and too difficult to enforce.

Goldstein adds that there would probably be no case if the sheriff was an "equal-opportunity hugger" of both men and women. He says treating women differently than men, even if socially acceptable, is another ingredient for liability. He says the court's reversal represents a trend where decisions are moving further away from objective standards or social norms and focusing on a plaintiff's feelings or perceptions.

Newsletter Sign-Up:

- Benefits
- HR Technology
- Talent Management
- HR Leadership
- Inside HR Tech
- HRENow
- Special Offers

Email Address

Submit

[Privacy Policy](#)

"Employers need to be aware of that's where we're headed and train their employees accordingly," he says.

This case also amplifies a broader employee message -- that any type of physical contact may be problematic, says Beth Joffe, an attorney at Lane Powell in Seattle.

HR needs to inform employees that physical contact is a privilege, she says, and, due to cultural, gender and religious differences, should generally be avoided in the workplace. However, Joffe stops short at suggesting a no-hugging policy. Instead, she says a company's anti-harassment policy needs to mention how hugging can be considered indirect harassment and that employees must exercise caution involving all types of physical contact, including excessive handshakes.

"You'll never avoid charges and claims, they're always going to happen," says Joffe.

"But the better your working environment . . . the more understanding of cultural differences, the less likely people will want to file claims."

Harassment is legally viewed from the eyes of the person being harassed, Joffe says, adding the harasser's intent does not matter. HR must respond to every complaint by

explaining to huggers that their affection was unwelcomed, even offensive, and that they must modify their behavior and respect individual differences. Progressive discipline can be used with repeat offenders, she says.

"It's a sad statement that we've gotten to a point in society that any type of physical contact in the workplace can lead to a lawsuit," says Joffe. "Companies are afraid to respond to this stuff [but] being responsive and respectful of these types of concerns pays dividends."

Send questions or comments about this story to hreletters@lrp.com.

Copyright 2017© LRP Publications



Topics

- Benefits
- [News & Opinion](#)
- Healthcare
- Retirement
- Disability
- Employment Law
- [Employment Law Stories](#)
- Legal Clinic
- [Most Powerful Employment Attorneys](#)
- HR Technology
- [News & Opinion](#)
- [HR Technology Conference](#)
- [Top HR Products](#)
- HR Leadership
- [News & Opinion](#)
- People
- Career Center
- [HR Executive of the Year](#)
- [HR's Elite](#)
- [Most Admired for HR](#)
- [Rising Stars](#)
- Conferences

- Talent Management
- [News & Opinion](#)
- [Performance Management](#)
- Compensation
- [Talent Acquisition](#)
- Relocation
- [Training and Development](#)
- Conferences
- Columns
- [Benefits Column](#)
- [HR Leadership Column](#)
- [HR Technology Column](#)
- [Talent Management Column](#)
- [Inside HR Tech Column](#)
- [Newsletters](#)
- [HREOnline™ Blog Network](#)
- [Compensation Café](#)
- [Steve Boese's HR Technology](#)
- [Great Leadership](#)
- [HR Observations](#)
- [China Gorman](#)
- [Dan Schawbel's Gen Y Blog](#)

Events/Webinars

- [HRE Conferences](#)
- [Webinars](#)
- Awards & Rankings**
- [HR Executive of the Year](#)
- [HR's Elite](#)
- [Most Admired for HR](#)
- [The Top 100](#)
- [Top HR Products](#)
- [Rising Stars](#)
- [Most Powerful Employment Attorneys](#)
- Multimedia**
- [Webinars](#)
- [Videos](#)
- [The Bill Kutik Radio Show](#)

About

- [About Us](#)
- [Subscriptions](#)
- [HRE Conferences](#)
- [Webinars](#)
- Research Center**
- [Legal Clinic](#)
- [White Papers/Case Studies](#)
- [HR Strategies](#)