

***First Wednesday — A Monthly Discussion of Employment Law  
Issues and Other Hot Topics for Management***

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**The Isiah Thomas Retaliation Case, and the Need to Conduct Sexual Harassment Prevention Training**

A recent multi-million dollar award in the sexual harassment case filed by ex-New York Knicks executive Anucha Browne Sanders against team Coach and President Isiah Thomas and their employer, the New York Knicks, underscores what employment lawyers have been stressing for years: retaliation claims against employers can lead to very high damage awards. Retaliation claims can be avoided with good supervisor training and other proactive measures. Unlike the acts of an employee/harasser aimed at another employee - which the employer may not learn about until after the fact - retaliation liability often flows from the employer's actions taken *after* an allegation of harassment or discrimination has been brought to the company's attention.

This bulletin recaps the *Thomas* case and suggests ways to minimize exposure to a retaliation claim. It also outlines California's sexual harassment training law and serves as a reminder to provide this training every two years for all supervisors and within six months for newly-hired supervisors.

***The Isiah Thomas Case***

Sanders filed suit against Thomas, Madison Square Garden Sports ("MSG"), and MSG Chairman James Dolan alleging that Thomas sexually harassed her, and MSG

and Dolan retaliated after she complained of the harassment. Sanders is a former star athlete herself, who won several prestigious awards as a basketball player for Northwestern University, including Athlete of the Decade in the 1980s. She was hired by MSG in 2000, and rose to be Senior Vice President of Marketing and Business Operations for the Knicks organization, making her one of the highest ranking African-American female executives in professional sports. She earned \$260,000 a year and said in a public statement that working in professional sports was her lifelong dream.

Shortly after Thomas' hiring by the Knicks in 2003, he allegedly began harassing Sanders. First, she alleged, he was demeaning, making statements such as "What the f--- is your job? What are your responsibilities you f----- ho?" and telling others in the organization not to listen to her. Later in 2004, Thomas' behavior toward her changed, and he became amorous, declaring his love for her and attempting to kiss the married mother of three. One trial witness, a friend of Sanders' and a 15-year Knicks employee, testified that he witnessed an occasion where Thomas tried to kiss Sanders in Madison Square Garden after a Knicks' victory, and she pushed him away.

Sanders complained about Thomas' behavior using official internal corporate procedures. The Knicks put her on leave status while investigating her allegations. Within one month, however, she was fired when the club said it couldn't substantiate her claims. When she filed her lawsuit in January 2006, the club said she had been fired for poor job performance. The club also said she was fired because she was incompetent with budget matters and undermined the internal investigation of her complaint. Sanders was then publicly chastised by the club for demanding a settlement of \$6,500,000 to "leave quietly." Throughout the litigation, Thomas, a Hall-of-Famer due to his playing accomplishments, maintained his innocence and said he would not be used as a pawn for someone else's financial gain.

### ***The Trial***

After a four-week trial, the jury took two days to find all defendants liable. While Thomas was found liable for harassment, the jury did not allocate any of the damage award specifically to him. Instead, the jury took one hour to decide the Knicks owed \$6,000,000 for condoning a hostile work environment and another \$2,600,000 for retaliation. The jury also found MSG's Chairman (Dolan), personally owed \$3,000,000

for his treatment of Sanders' allegations and her subsequent firing. The total award: \$11,600,000. Since no damages were assessed against Thomas, it is very likely that the Knicks' and Dolan's retaliatory actions, after the charges of harassment were brought forth, led to the high award. Had the club responded to her complaint differently, the beleaguered franchise, which was already struggling with a losing record under Thomas' leadership, might have emerged unscathed.

### ***Impact of Sexual Harassment***

Sexual harassment negatively affects an organization's bottom line in myriad ways, including loss of productivity, decreased employee morale and retention, and unnecessary legal costs. Condoning such behavior not only increases these negative effects, but opens the door to an even more costly retaliation claim against the employer. To minimize exposure to a retaliation claim, employers need to provide clear procedures for employees to report offensive behavior, promptly conduct a thorough and proper investigation, and avoid taking any actions against the complaining employee that could be perceived as a negative consequence for that employee's report of potentially illegal conduct. Employers in California must also comply with state-mandated sexual harassment training, which is designed to provide managers with the knowledge and tools needed to properly respond to allegations of such conduct.

### ***Mandatory Sexual Harassment Training***

California law requires that employers with 50-or-more employees provide all newly-hired or promoted supervisors with two hours of classroom or other interactive training within six months of assuming a supervisor position. The 50-or-more employee count is interpreted broadly, to include part-timers, temporary or agency employees, and some independent contractors. Employees outside the state are counted for purposes of determining the 50-or-more employees, although supervisors located outside the state do not need to be trained. The training must be specifically designed to train supervisors in the detection, prevention and correction of sexual harassment, discrimination and retaliation. In addition to training about sexual harassment, a good program should also address other areas of harassment and discrimination, such as racial, age, disability and other prohibited forms of harassment and discrimination.

The training of all supervisors must occur every two years. All managers initially trained in 2005, when the law became effective, should be retrained by December 31, 2007. The definition of “supervisor” is very broad, and includes anyone who has independent authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, direct the day-to-day activities of other employees, or resolve employee conflicts. This includes employees who take these actions directly and also employees who can effectively recommend these actions to upper management.

Companies created after January 1, 2006 having more than 50 employees must provide the training within six months of their establishment and every two years thereafter. Companies created before January 1, 2006 that expand beyond 50 employees must provide the training within six months after they become eligible and every two years thereafter.

It is important that companies maintain documentation of every supervisor’s training completion for at least two years. The documentation must include the names of the supervisors trained, the date of the training and the name of the training provider. Companies should also maintain a copy of the training materials, which may become relevant to claims and defenses raised in sexual harassment and retaliation cases.

The training must be interactive. Video training is insufficient without discussion and a question-and-answer session or similar techniques led by a qualified trainer. Detailed regulations provide that qualified trainers must, through a combination of training and experience, have the ability to train supervisors about:

- Unlawful harassment, discrimination and retaliation under both California and federal law;
- Steps to take when harassing behavior occurs in the workplace;
- Reporting harassment complaints;
- Responding to a harassment complaint;
- The employer’s obligation to conduct a workplace investigation;
- Retaliation and how to prevent it; and
- Essential components of an anti-harassment policy.

The persons qualified to deliver training include licensed attorneys specializing in employment law, certain professors and specialized instructors, and human resource professionals or harassment prevention consultants. For each category, the trainers must have at least two years' experience in their respective fields relevant to the subject matter required for effective prevention training.

Companies whose supervisors fail to complete the training are subject to a corrective order from the Department of Fair Employment and Housing (DFEH) as well as increased exposure to harassment claims and increased damage awards in those claims. The DFEH is asking employers, as its first discovery question, whether employers are conducting the required training.

Our Firm offers training by qualified attorneys. In addition to avoiding the negative effects of failing to train, substantial benefits are gained by effective classroom training, including the reduction of incidents of sexual harassment and retaliation through open discussion with supervisors and their Human Resources team.

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