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**ANOTHER CALIFORNIA APPELLATE COURT HOLDS THAT
EMPLOYERS ARE NOT LIABLE FOR CLIENT OR
CUSTOMER HARASSMENT
(June 9, 2003)**

Summary

On June 4, another California Court of Appeal held that employers *cannot* be held liable under California law for alleged sexual harassment by non-employees. This decision follows a similar conclusion reached by another court of appeal late last year in *Salazar v. Diversified Paratransit*. The *Salazar* decision was taken up for review and is pending before the California Supreme Court. It has been briefed and is awaiting argument. If this latest decision is any sign, *Salazar* could provide significant relief to California employers from liability in situations where they often have limited control.

Details

In *Carter v. California Department of Veterans Affairs*, the plaintiff was a registered nurse who worked at a veterans' residence facility. She alleged that one of the patient residents of the facility had consistently harassed her, and her employer had taken little or no action to stop the harassment. She brought her sex harassment claim against her employer under California's Fair Employment and Housing Act (FEHA), as most plaintiffs who sue for sex harassment in California do. The employer argued that such a claim was improper because the alleged harasser was not its employee or agent, but a customer. The employer asserted that the FEHA does not allow an employer to be sued based solely on the actions of its customers or clients.

The Court of Appeal agreed with the employer. After engaging in a detailed examination of the language of the FEHA, as well as its legislative history, the Court concluded that the FEHA does not impose a duty on an employer to protect an employee from sexual harassment by a non-employee. The Court also concluded that a plaintiff could not "back door" such a lawsuit by alleging that the employer had violated the FEHA's general admonishment that employers must "take all reasonable steps necessary to prevent discrimination and harassment from occurring."

What this Means

The *Carter* decision may not be with us for long, as it is likely that the California Supreme Court will take it up for review because it presents the same issue as in *Salazar*. However, the Court of Appeal's decision in *Carter* is an indicator that at least three more judges are inclined to find in favor of employers on this issue. If Supreme Court agrees with these appellate courts on this issue, it would eliminate a significant amount of potential liability employers in the sex harassment arena.

As a practical matter, this should not modify how an employer responds to harassment allegations. Regular training and prompt, thorough investigations of any complaints should still be the rule. This is because there is still potential liability for non-employee conduct under federal law, albeit with damage limitations. More importantly, it is just good business to prevent these distractions and to promptly resolve any such issues that arise. However, assuming the Supreme Court agrees with the appellate courts in *Salazar* and *Carter*, complaints about non-employee conduct should result in a reduced threat of legal action, which may be helpful due to the inherent difficulties and politics that often attend issues of non-employee conduct.

This E-Update was authored by [Mike Sullivan](#). If you have any questions about this E-Update, please contact the author or any PPS&C attorney at (619) 237-5200.

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