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Employer Not Liable For Co-Worker's Harassing Off-Duty, Off-Premises Conduct But Should Have Better Protected Employee

California Employment Law Update on **September 12, 2025**

In *Kruitbosch v. Bakersfield Recovery Services, Inc.*, the California Court of Appeal—for the first time—addressed the issue of employer liability for harassment by a *non-supervisory* co-worker during non-working hours and off-premises conduct.

A coworker (Lisa Sanders) of plaintiff Steven Kruitbosch allegedly subjected him to crude sexual advances at his home and via his personal cell phone away from the premises of their employer, Bakersfield Recovery Service, Inc. (BRS). Specifically, Sanders sent Kruitbosch multiple unsolicited nude pictures, showed up uninvited to his house, and repeatedly propositioned him for sex. When Kruitbosch reported the conduct to Human Resources, the HR rep told him there was nothing that could be done, ostensibly because the alleged activity occurred off work premises.

The HR rep later posted a video on social media depicting whining dogs and stated, "'This is a workday at thr [sic] office . . . lmbo[,]'" which Kruitbosch understood to be mocking him. The HR rep also sarcastically commented to Kruitbosch, "'I hope you don't get no more pictures[,]'" presumably referring to the unsolicited nude pictures sent by Sanders to plaintiff. At no point did anyone at BRS take any steps to separate Kruitbosch from Sanders or to prevent further harassment—nor did BRS initiate any disciplinary action against Sanders. Although Kruitbosch made efforts to avoid Sanders at work, his distress at the prospect of interacting with her coupled with BRS's failure to protect him in the workplace and mocking him for his complaint allegedly detracted from his work duties and made continuing his employment feel impossible; Kruitbosch resigned a week later.

Thereafter, Kruitbosch filed suit alleging sexual harassment, discrimination, and retaliation in violation of the California Fair Employment and Housing Act (FEHA). The trial court dismissed Kruitbosch's second amended complaint with prejudice and without leave to amend. Kruitbosch appealed. The California Court of Appeal reversed in part and affirmed in part.

Although the Court found Sanders's alleged harassing conduct to be reprehensible, the Court determined that it was not sufficiently work-related to be within the ambit of the FEHA, and it did not occur at the workplace. Therefore, BRS was not liable for Sanders's allegedly harassing conduct. The key question the Court must analyze under such circumstances is whether the alleged conduct is work-related. The Court found there were no allegations that Sanders approached Kruitbosch at his home or contacted him via cell phone for any work-related purpose, even pretextually. Specifically, there were no allegations indicating that Sanders's unwanted sexual advances had anything to do with work—they did not occur in the context of a work-related event, arise from circumstances approved, sanctioned or paid for by BRS, or derive from work-related social circumstances where employees would foreseeably interact and socialize.

However, the Court found the hostile work environment claim was viable based on a theory that BRS's response to Kruitbosch's complaint about Sanders's conduct altered Kruitbosch's work environment in an objectively severe manner. Given the totality of the circumstances presented, the Court explained that BRS's refusal to take any action while simultaneously mocking Kruitbosch's concerns, could indicate to a reasonable person in Kruitbosch's circumstances that BRS had no objection to Sanders's conduct and that Kruitbosch's concerns about her conduct were a literal joke to BRS. The aggressive nature of Sanders's sexual advances and BRS's complete inaction could be viewed as having the effect of altering Kruitbosch's work environment in an objectively severe manner, as Kruitbosch alleged.

With *Kruitbosch* in mind, employers should take seriously and thoroughly investigate all complaints of harassment regardless of whether the alleged conduct occurred at or away from the workplace. We will continue to monitor further developments.

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