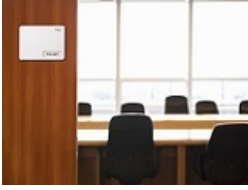


ALLEGATION OF WORKPLACE RAPE INCITES LAWSUIT FROM PERSON INVESTIGATING CLAIM



A lawsuit surrounding a sexual harassment claim at the workplace had a unique quality: it was filed neither by the person making the accusation of sexual harassment nor by the person accused. Instead, the action was brought against Sears Holdings Corporation by a woman who was terminated soon after handling the investigation of the harassment claim. The woman worked off and on for Sears or its affiliates for more than 15 years. In 2006, she was supervising 20 stores as a Loss Prevention District Coach, minimizing risks – i.e. theft – and maintaining company assets such as employees. Due to “deficiencies,” she was placed on a Performance Improvement Plan for several months. A few days prior to the completion of the plan, the woman was notified of a potential claim of sexual harassment. Another woman working as an Assistant Store Coach alleged that she had been sexually harassed by the Store Coach. The company suspended the Store Coach, and the plaintiff and a male employee talked to the assistant. Believing that she was not forthcoming, the employees decided that the plaintiff should talk to the assistant alone, who said that she had been raped by the Store Coach on multiple occasions. She also did not want the police or her husband to know of the alleged rape. Sears complied by not involving law enforcement, and the Store Coach was fired.



Two months after the assistant’s initial report, the plaintiff was terminated. The company stated that, in the course of her investigation, she had violated policies by meeting with the accuser alone, suggesting to the other woman that she had been raped in lieu of asking an “open-ended question,” and not obtaining any video evidence. The plaintiff filed an EEOC (Equal Employment Opportunity Commission) charge, claiming sexual discrimination and retaliation. Her resulting suit alleged a violation of Title VII of the Civil Rights Act. She argued in a district court that she had clearly opposed the sexual battery and that the company had refused to call the police at her behest. She further cited a statement from her boss, who said that he believed she had been fired for “uncovering” rape at Sears’ workplace. The court granted summary judgment in favor of the company, stating that the plaintiff had not established pretext for her termination. An appeals court in Florida believed that the plaintiff had not engaged in “protected activity,” a necessary component in proving retaliation. The court cited the “manager rule” of Title VII – the action is protected only if the manager is making the complaint, not simply performing his/her job. Appellate judges likewise did not believe that the plaintiff had successfully argued that Sears’ response to the allegation was unlawful. The man accused was fired, and the police had not been notified as the complainant had requested. Because the woman was not protected by Title VII and had failed in providing evidence that the company was acting improperly, the appeals court affirmed the grant of summary judgment against the plaintiff.