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## GUEST COLUMN

## How ignoring harassment allegations cost the LAPD \$4M

**A recent California appellate court decision underscores that employers must take prompt, meaningful action in response to harassment allegations, as a failure to do so can not only escalate the harm but also result in significant liability.**

By Ryan H. Wessels

A recent California appellate court decision — *Carranza v. City of Los Angeles* — reminds employers of their duties in responding to allegations of sexual harassment. The \$4 million verdict also cautions employers about the consequences of failing to take immediate and appropriate corrective action.

### The decision

Lilian Carranza was a captain in the Los Angeles Police Department (LAPD) who learned that a photo of a topless woman was being widely circulated among LAPD officers. Though the photo was not of Carranza, rumors were being spread that the woman was Carranza. When Carranza found out, she immediately asked the LAPD to (1) investigate the source of the dissemination, (2) notify LAPD personnel that the photo was not of her, and (3) order LAPD personnel to cease disseminating the photo. Nobody ever made any derogatory comments to Carranza or otherwise directly harassed her.

The LAPD's investigation did not identify the parties responsible for disseminating the photo, so it did not issue discipline. Additionally, citing concerns that a broad announcement would cause Carranza further embarrassment, the LAPD declined to notify employees that the woman in the photo was not Carranza or direct them to stop circulating the photo.



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A jury awarded Carranza \$4 million in noneconomic damages, which the court of appeal upheld.

### The significance of the LAPD's response

The *Carranza* case is noteworthy in stressing the importance of an employer's subsequent remedial efforts. The court held that, "[c]ompounding Carranza's distress was the fact that, despite her repeated requests, the Department did not order LAPD officers to stop sharing the photo, advise them that it was not Carranza in the photo, or discipline anyone involved in the distribution of the photo. That the LAPD allowed the distribution to continue

unchecked not only speaks to the sufficiency of the LAPD's response to the harassment, but also to the pervasiveness and severity of the harassment itself and the impact on Carranza's work environment."

In other words, an employer's response (or lack thereof) to inappropriate conduct could transform conduct that does not rise to the level of harassment into actionable harassment.

For employers and HR professionals, the case serves as a stark reminder that a prompt and meaningful response to workplace misconduct isn't just good practice but also legally required and may be an important part of any civil defense. In the eyes of the jury, delayed and

superficial investigations are unlikely to be credited.

Additionally, the decision reminds employers that, in response to harassment allegations, they have tools beyond simply disciplining the perpetrator. In *Carranza*, those tools included an announcement about the photo to try to curb its dissemination. (As a caution to employers, this action may have been appropriate there because Carranza had requested the announcement; employers should be wary of making any public announcements without discussion with the complainant.) Other available tools for employers may include separating the employees, providing additional supervi-

sion, enhancing company policies, allowing worksite transfers, or granting the victim a leave of absence. Of course, to prevent claims of retaliation, any action that would involve a change to the complainant's terms or conditions of employment should be undertaken only with the employee's consent.

### Secondhand harassment

The court's decision is also a reminder to employers that they could be liable for harassment even if the plaintiff did not personally witness the harassment. The court held that the "FEHA does not require that Carranza have (1) had any direct interaction in which a coworker was disrespectful to her regarding the photo, (2) experienced direct 'sexual hostility in her day-to-day work environment,' or (3) been 'assaulted, threatened, propositioned, subjected to physical contact, or subjected to physical language in her presence.'" As long as the employee learns of the harassment, it can affect their working conditions, so it may support a harassment theory.

When coupled with the 2019 legislative amendment codifying that a single incident of harassing conduct is sufficient to create a triable issue of harassment, and that harassment cases are rarely appropriate for disposition on summary judgment, the Carranza court's analysis underscores the importance of conducting a contemporaneous investigation.

### Valuing harassment claims

The \$4 million verdict in Carranza also gives insight – albeit limited – into valuing employment claims where the leading damages driver is non-economic.

When valuing civil claims in employment lawsuits, many attorneys start by calculating economic damages. This is a reasonable starting place for assessing claims involving a termination, failure to hire or promote, or accommodation failure that results in unpaid leave. These cases generally come with concrete losses that can be readily quantified, such as lost wages, benefits, or other employment-related compensation.

But what about claims where the employee experienced no obvious wage loss, such as in claims involving harassment? Where does one even start in forming a valuation?

A potential starting place is jury verdicts. But one must be careful in relying only on those verdicts receiving publicity or being appealed, since both tend to be significantly higher than the average award. Relying solely on these high-profile verdicts can result in unrealistic expectations, either in settlement negotiations or courtroom strategy.

In *Carranza*, the California jury awarded \$1.5 million in past non-economic damages and \$2.5 million in future noneconomic damages. On the "spectrum" of harassment cases (where one end is derogatory remarks and the other is nonconsensual forcible touching), this seems to fall close to the middle. Yet the \$4 million verdict would suggest particularly extreme harassment.

So, it seems plausible that the \$4 million verdict was therefore meant to punish the LAPD, given its arguably superficial response

to Carranza's repeated complaints. Since the employer's response can play a pivotal role in determining liability and damages, a company that promptly investigates, disciplines those responsible, and takes steps to protect the employee may both avoid liability and reduce potential damages.

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