

PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

To: Trish Brown, CEO
Susan Willars, VP Human Resources

From: Regina C. (Gina) Williams, J.D.

Date: December 5, 2016

Re: Sexual Harassment Avoidance Training: Meeting Summary

I met with Larry Wallace this morning for approximately two hours at the law offices of Stahl, Bernal & Martens at 7320 N. Mopac, Suite 211. The firm graciously offered their conference room to me without charge. Neither the identity of who I was meeting with nor the purpose of the meeting was disclosed to the firm. Here is a brief summary of what we discussed in the training:

After introducing myself to Larry, I asked Larry to tell me a little bit about his background and career. After he did so he said he had initially questioned Susan as to why he was being asked to meet with me. He pointed out that he had served as Interim CEO on two previous occasions without incident and that he had consistently been voted Manager of the Year until this past year when Trish decided not to hold the vote because he would win it again. Larry said that he is committed to fair treatment not only for female employees but for all employees and in fact, employees both at Central Health and in previous positions he has held have often come to him to with their complaints or concerns, sometimes when he didn't even supervise the employee.

He then volunteered that some *seven* years ago he made an unfortunate comment to a female [REDACTED] [REDACTED]. In the presence of a construction manager when the three of them discovered a pole painted red during a construction tour of a hospital and they all wondered why it was there and that color. Larry kiddingly suggested the female [REDACTED] could use it to pole dance, or words to that effect. He said he later apologized for that one flippant remark and despite the comment, he thought they remained friends because the female [REDACTED] had asked him to help her select a car after that incident occurred. He noted that he and the female [REDACTED] had very different [REDACTED] styles and that the statistics showed that there had been a high degree of turnover in [REDACTED]. I informed Larry my purpose was not to investigate or revisit that incident but rather to provide sexual harassment avoidance training as he undertakes his new role. I explained that the State of California now requires by law at least two hours of mandatory nonharassment and nondiscrimination training of managers and supervisors of certain companies of a requisite size on an annual basis and many companies were moving to that standard. I said that in his new role it was my hope that the training could be very valuable to him and that he could also offer suggestions as to approaches that might work best with the wider training.

I noted that Susan Willars was planning a longer and more comprehensive harassment and discrimination avoidance training in the coming year for all executives and managers. Larry agreed that the organization's employees could benefit from that and he stated Susan had improved the Human Resources Department since coming to Central Health. At a later point we seemed to be in agreement that besides sexual harassment, both LGBT discrimination and anti-Muslim rhetoric were key areas which should also be addressed in any training given the current political climate and likely increase in such claims.

I gave Larry a brief notebook containing certain EEOC guidelines, an article about physician harassment and a couple of retaliation cases from the Fifth Circuit. I explained the two main kinds of sexual harassment, hostile environment and quid pro quo and I explained how the regulatory protections also extended to same sex harassment including LGBT and transgender individuals. I stated there was a split in the courts as to whether consensual sexual favoritism constituted sexual harassment and provided the EEOC guidelines on that issue as well. With regard to the general harassment avoidance training I further explained 1) what constituted sexual harassment under EEOC guidelines and caselaw; 2) why retaliation claims for filing a charge could be actionable even if the underlying harassment or discrimination claim was meritless; 3) what constituted best practices for companies and executives in handling and responding to and preventing sexual harassment claims and 4) what were my recommendations for best practices for executives and managers to avoid or minimize sexual harassment claims. I spent a great deal of time providing specific examples of objectionable conduct resulting in charges or litigation being filed by offended victims and how such claims could be avoided by managers. Larry asked if it was okay to use the term "Ladies" and whether or not compliments about a female's dress were appropriate. We also discussed the numerous employees who requested that he give them a hug because of deep sadness they felt over the suicide of a beloved employee.

I also explained that going forward, the best course of action for an executive in particular is to be above the fray by avoiding sexist comments and jokes and touching in the first place. I noted that raw jokes, pornography, sexist comments, leering, not taking no for an answer, unsolicited back rubs and touching and too long or too tight hugs were fertile grounds for claims or were "the card" that disgruntled employees with poor performance records could play later if they didn't get the promotion or pay raise they desired or were selected for layoff or termination which prompted them to file a retaliation claim. Because of the power differential I noted an employee could still be offended but might not complain immediately of sexual harassment because of fear of retribution by the manager or employee. I explained this is why sexual harassment avoidance policies contained a provision that there would be no retaliation for an employee voicing a complaint. I further noted that an employee's silence did not signal agreement to the offending conduct.

We discussed that in an investigation of sexual harassment complaints frequently there are no other witnesses except the complainant and the alleged perpetrator. In many situations an employer may utilize a transfer of the complaining employee and sexual harassment training to remedy the situation because of conflicting versions of events. I said that sometimes individuals are wrongly accused but proving that is very difficult. I noted that having a stellar reputation in the first place can help if an executive is wrongly accused and an investigation of alleged harassment ensues.

We then discussed the importance of timely evaluations and managers needing to put in written form write-ups for performance or conduct issues because in the absence of written documentation or deeply compelling testimony of performance problems, juries tended to believe the employee's work performance was acceptable to management.

Larry seemed very receptive to the information provided. He came across as very personable.