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From hugfest to slugfest: “high frequency hugging” may land you in court

As an employer, must you prevent workplace hugs of affection? Will tolerating hugging increase the risk of a sexual harassment lawsuit? According to a decision last week by the U.S. Court of Appeals for the Ninth Circuit, there is a risk, and it is a real one. The Court allowed a female correctional officer to move forward with a suit that her boss’ propensity to hug created a hostile work environment, even though she never told him that his hugs were unwelcome.

By all accounts, the hugger, Sheriff Prieto, is an affable and friendly lawman. The citizens of Yolo County (Calif.) elected him to his post in 1998. Before that, according to the county’s website, Prieto served on the California Highway Patrol, where he held “every rank from Officer to the highest leadership role as Commander” and “retired as a Captain in 1998, after 31 years of service and receiving many commendations and awards.” His wife still works for the California Highway Patrol, and the couple has five daughters. The plaintiff, Victoria Zetwick, accuses him of being a harasser and creating an abusive work environment.

When the sheriff introduced himself to the staff after the election (as the new sheriff in town, so to speak), he hugged Zetwick and all other female staff members present. During the next 13 years that they worked together, sometimes closely and sometimes rarely, Sheriff Prieto apparently showed too much affection. In her lawsuit, Zetwick estimated that over the course of those many years, Sheriff Prieto hugged her some 125 times. She sued not only the sheriff, but also the county for failing to prevent and stop the sexual harassment.

The defendants moved for summary judgment in the federal district court. While disputing Zetwick’s estimate of the number of hugs, the defendants pointed out that any and all hugs were at training sessions, prisoner graduations, awards banquets and the like. They were never in private. Nor were they romantic or sexual. The defendants pointed to Zetwick’s own description of the hugs as “the kind that one might give a relative or a friend, lasting only a couple of seconds, and not involving sexual comments or other touching.” Zetwick countered that she saw the sheriff “hug and kiss several dozen other female employees,” while male employees were greeted with a handshake. Even if the hugs were friendly, Zetwick argued, they were nevertheless “chest to breasts.”

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The case truly was all about hugs. As indicated in the Court's opinion, Zetwick offered only two other events she thought evidenced a sexually hostile work environment. First, the sheriff on one occasion "stared" at another female worker "in a sexually suggestive manner." Second when Sheriff Prieto congratulated Zetwick on her recent marriage, the kiss he offered her landed "partially on her lips."

Zetwick did not tell Sheriff Prieto that she would rather he not hug her. In fact, he apparently did not learn she was offended until she sued. The district court granted the defendants' motions for summary judgment because Zetwick could not prove that she was the victim of a severe and pervasive hostile work environment.

"... employers can best shield themselves from hostile work environment discrimination claims by scolding even the best-intentioned of huggers."

In its ruling last week, the Court of Appeals reversed that decision and allowed Zetwick to proceed with her hostile work environment lawsuit. The Court criticized the district court for assuming that hugs and kisses on the cheek are within the realm of "common workplace behavior." In this case, according to the Court, a jury could conclude that the sheriff's hugs subjected Zetwick to a severe or pervasive hostile work environment due to the number of hugs. In addition, the Court found it relevant that Sheriff Prieto tended to hug only the women who worked for him. (The county claimed that the sheriff sometimes hugged males, but Zetwick claimed she never saw that.) The Court expressed concern that there might have been "qualitative and quantitative differences" between the sheriff's hugs of women and his hugs of men. Further, the Court believed there were factual issues requiring a trial, such as whether there were periods of "high frequency hugging" and the number of times Prieto did *not* hug Zetwick when they met.

Everybody needs a hug now and then. People who study these things have found that hugs are beneficial. A recent [study](#) found that "nonsexual physical touch, such as hugging, is a means of conveying empathy, caring, and reassurance and that this implicit communication of affection and concern" can alleviate stress and help prevent illnesses. There is even a National Hugging Day (January 21). On the other hand, we can all think of someone at work that we would prefer not embrace us, and some people may perceive hugs as patronizing.

Perhaps 125 hugs over thirteen years is a few dozen too many, but Sheriff Prieto was obviously inclined to incorporate friendly hugs in his workaday greetings. No law obligated him to interact with his staff in anodyne, robot-like fashion. For her part, Zetwick did not characterize any single embrace as a dreaded hug of hostility, nor did she complain to the sheriff that his hugs were unwelcome, much less anxiety-provoking. This case is notable in part because none of the hugs was ever hostile, yet the plaintiff may now characterize them as creating an abusive workplace. In light of this recent decision, employers can best shield themselves from hostile work environment discrimination claims by scolding even the best-intentioned of huggers.

This summary is provided as an informational tool.

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