

LEGAL UPDATES

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# Corporations Exposed to Liability under the Illinois Gender Violence Act

### Key points:

Corporations may be held vicariously liable for employee conduct under the Illinois Gender Violence Act.

An Illinois appellate court justified the imposition of liability as a consequence of expanding corporate rights, including the concept of corporate personhood.

The appellate court decision constitutes precedent on lower courts in the state, and thus is law in Illinois.

Employers can be liable for unaddressed complaints of sexual harassment involving offensive physical touching, violence or the threat of such acts.

Damages are not capped and can be more extensive than under Title VII or the Illinois Human Rights Act; timelines for filing are considerably longer than for HRC and EEOC sexual harassment claims.

In a case of first impression, the Third District Appellate Court of Illinois in *Cynthia Gasic v. Marquette Management, Inc.* issued a brief opinion that belies its potential legal significance for employers. The court's 2-1 decision addressed the narrow issue of whether a corporation can act "personally" and constitute a "person" for the purpose of liability under the Illinois Gender Violence Act (Act). Based on the language of the Act and the evolution of corporate personhood in recent jurisprudence, the court held that a corporation can act personally and be held liable *under some circumstances*.

### The scope of the term "person" under the Act

The plaintiff, Cynthia Gasic (Gasic), was physically attacked in her apartment by a maintenance engineer employed by the defendant corporation, Marquette Management Inc. (Marquette). Marquette managed the apartment complex in which Gasic resided. Gasic sued Marquette's employee and Marquette, alleging that Marquette was liable under the Act because it failed to supervise and monitor its employee and to protect Gasic from its employee who allegedly had a history of sexual violence.

Section 10 of the Act provides a civil cause of action against a person or persons perpetuating gender-related violence. "Perpetuating" is defined as personally committing the gender-related violence or *personally encouraging or assisting the act or acts of gender-related violence*. The terms "person" and "personally" are not defined in the Act. Plaintiff contended that the General Assembly's decision to not limit the definition of the term "person" to natural persons indicated that the term applied to entities such as corporations in accordance with the Illinois rules of statutory construction.

The trial court, however, disagreed and dismissed with prejudice Gasic's claim against Marquette, on the basis that "artificial entities" cannot encourage or assist gender-related violence under the Act. Gasic subsequently filed an interlocutory appeal from the trial court's decision with the Third District Appellate Court of Illinois.

### **Corporations subject to liability under the Act**

The trial court's narrow ruling enabled the appellate court to focus directly on the issue of whether the Act imposed a similar level of accountability on corporations as on individuals for the purpose of liability under the Act. The Third District Appellate Court of Illinois is the first state appellate court to directly address the issue of corporate liability under the Act.

In reaching its holding that a corporation could be held civilly liable under the Act, the appellate court favorably acknowledged two federal district court cases from the Northern District of Illinois. In those two cases, the courts denied the defendants' motions to dismiss and allowed the plaintiffs to proceed on their claims of violation of the Act against the corporate defendants. The two courts similarly indicated that liability under the Act may be imputed to a corporation if the corporation's employee engaged in gender-related violence and the corporation knew or should have known of such actions and failed to act. The failure of the corporate entity to take actions against the employee who was also the perpetrator of the gender-related violence was construed as tantamount to encouraging or assisting its employee's illegal conduct.

While the extension of corporate liability based on a theory of vicarious liability is significant, the Illinois appellate court also justified the imposition of corporate liability as a consequence of the expanding rights afforded to corporations. According to the court, the "rapidly expanding concept of corporate personhood," which places a corporation on parity with natural persons, blurs the

distinction between natural persons and corporations. The court explained that given the expanding rights afforded to corporations, it is “hypothetically possible” to construct a “perfectly-worded complaint” to assert a claim against a corporate entity for acting “personally” under the Act. The court did not rule on whether the complaint at issue in the underlying case was such a perfectly worded complaint but remanded the issue to the lower court for adjudication.

### **What this means to you**

The decision by the Third District Appellate Court of Illinois constitutes binding precedent on lower courts in the state, which are bound by appellate court decisions from any appellate district in Illinois, unless and until a conflict among the state appellate courts arises. Any conflict among the state appellate courts would be resolved by a decision of the Illinois Supreme Court.

Consequently, the *Gasic* decision currently represents the law in Illinois with regard to the scope of the Act as it applies to corporate employers and sanctions another avenue of recovery for individuals who are subject to sexual harassment. Workplace misconduct that constitutes a battery or the threat of a battery as defined under Illinois law would be subject to the Act. The definition of a battery under Illinois law includes offensive touching. As a result, sexual harassment that involves physical contact or the threat of physical contact is well within the purview of the Act.

A violation of the Act exposes business entities to damages that are potentially more extensive than damages under either Title VII or the Illinois Human Rights Act. Damages recoverable under the act are actual damages, damages for emotional distress, punitive damages, attorney’s fees and costs. Courts are also authorized by the Act to award injunctive relief or “other appropriate relief.” Additionally, there are no caps on damages, and the law applies to all employers regardless of size.

Moreover, the time periods allowed under the Act for filing a cause of action are lengthier than those allowed under federal and state discrimination laws. The statute of limitations under the Act is either seven or two years from the date the action accrues, depending on the whether the gender-related violence constitutes a battery or the threat of a battery. Comparatively, the statute of limitations for actions involving sexual harassment that are filed with the Illinois Human Rights Commission or with the Equal Employment Opportunity Commission is 300 days.

Given the *Gasic* decision, employers should review and enforce their policies and practices addressing sexual harassment as well as physical and verbal misconduct in the workplace to avoid exposure to liability under the Act.

### **Contact us**

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If you have questions or would prefer assistance with development or review of your sexual harassment and related employment policies, or training for your management team, contact Julia Farrell, Anne Mayette or your Husch Blackwell attorney.

*Tracey Oakes O'Brien was a contributing author of this content.*