

THOMAS W. RIECK
trieck@rieckcrotty.com
JEROME F. CROTTY
jcrotty@rieckcrotty.com
RONALD P. DUPLACK
rduplack@rieckcrotty.com
DOUGLAS C. CONOVER
dconover@rieckcrotty.com
KEVIN P. BROWN
kbrown@rieckcrotty.com
BERNARD A. HENRY
bhenry@rieckcrotty.com

RIECK AND CROTTY

ATTORNEYS AT LAW

A PROFESSIONAL CORPORATION

55 WEST MONROE STREET, SUITE 3390

CHICAGO, ILLINOIS 60603-5062

CHICAGO'S BUSINESS LAWYERS

TELEPHONE

(312) 726-4646

TELECOPIER

(312) 726-0647

FIRM WEB SITE:

<http://www.rieckcrotty.com>

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THE COURTHOUSE PERSONNEL DEPARTMENT

EMPLOYERS CAN AVOID LIABILITY FOR SUPERVISOR'S HARASSING CONDUCT

Darlene M. Deters ("Deters") was employed by Rock-Tenn Converting Company ("Rock-Tenn"). When Deters was hired, she was advised of Rock-Tenn's sexual harassment policy. Several months later, Deters' supervisor began making sexually explicit comments and obscene gestures to her on an almost daily basis. In addition, during a lunch on Secretary's Day, the supervisor asked Deters to have an affair with him. While Deters did not appreciate such conduct, she did not ask the supervisor to stop and did not report his conduct for three years.

Upon finally receiving Deters' complaint, Rock-Tenn began an investigation of Deters' claims as part of a larger investigation of Deters' supervisor's conduct. After completing the investigation, Rock-Tenn terminated Deters' supervisor. However, Rock-Tenn delayed the termination for almost a month because of the Christmas and New Year's holidays.

After her supervisor's termination, Deters began to suffer extreme anxiety requiring outpatient treatment for work related stress. Deters requested and was granted Family and Medical Leave Act leave to obtain treatment, but never returned to work. Instead, Deters filed a Charge of Discrimination and law suit against Rock-Tenn, alleging she was sexually harassed during her employment.

Rock-Tenn responded that (a) it exercised reasonable care to prevent and promptly correct any sexually harassing behavior and (b) Deters unreasonably failed to take advantage of any preventive or corrective opportunities provided by Rock-Tenn in its sexual harassment policy. The Court agreed, finding that Rock-Tenn's sexual harassment policy, Deters' failure to report her supervisor's conduct for over three years, and the termination of Deters' supervisor as a result of his conduct were a defense to Deters' claims. Accordingly, the Court entered judgment in favor of Rock-Tenn.

If you have a questions regarding whether certain conduct amounts to sexual harassment or whether your company has policies in place which would allow it to take advantage of the defense asserted by Rock-Tenn, please telephone a member of the firm.

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Rieck and Crotty, P.C. publishes *THE COURTHOUSE PERSONNEL DEPARTMENT* bi-monthly to keep employers and employees advised of current issues and decisions throughout the United States relating to employment law matters which may impact our readers. If you desire additional information concerning any of the articles, please telephone a member of the firm.

NO MAGIC WORDS NECESSARY FOR FMLA NOTICE TO BE PROPER

James Sarnowski was employed by Air Brook Limousine, Inc. (“Air Brook”). During his employment, Sarnowski had coronary-pass surgery because of blockage in his coronary arteries. A year after his surgery, Sarnowski began to experience symptoms suggesting he had additional blockage. After meeting with his doctors, Sarnowski was advised he might need additional surgery. Thereafter, Sarnowski advised Air Brook he might need surgery. A week later, Air Brook terminated Sarnowski.

Sarnowski filed suit, alleging his termination violated his rights to take up to twelve weeks leave under the Family Medical Leave Act (“FMLA”). Air Brook responded that Sarnowski’s notice of his condition was insufficient under the FMLA because Sarnowski did not state that he was requesting FMLA leave, did not indicate when the leave would begin and did not disclose the length of the leave.

The court rejected Air Brook’s argument stating:

In providing notice, the employee need not use any magic words. The critical question is how the information conveyed to the employer is reasonably interpreted. An employee who does not cite to the FMLA or provide the exact dates or duration of the leave requested nonetheless may have provided his employer with reasonably adequate information under the circumstances to understand that the employee seeks leave under the FMLA.

Thus, the court held Sarnowski could proceed to trial in his FMLA claims.

If you have a question about whether proper notice has been given under the FMLA, please contact a member of the firm.

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OPINION EXPRESSED IN PERFORMANCE REVIEW IS NOT DEFAMATORY

Mabrouk Chaara (“Chaara”) was an engineer for Intel Corporation (“Intel”). During his annual review, Chaara was advised to work on his communication skills. Thereafter, when Chaara failed to receive a promotion, he filed suit, alleging the review was defamatory.

Intel argued Chaara’s performance review could not be defamatory because it merely expressed an opinion regarding Chaara’s performance and opinions are not defamatory under the law. The court agreed stating Chaara’s review was “an entirely subjective judgment about Chaara’s communication skills . . .” Thus, the court found the statements were not defamatory.

The *Chaara* ruling establishes that an employer will not be liable for critical statements in a performance review so long as the statements merely reflect the opinion of the reviewer.

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