

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Deirdre M. Pawell,)	
)	
Plaintiff,)	
)	
v.)	No. 03 C 3158
)	
Metropolitan Pier and Exposition Authority,)	Judge Holderman
)	
Defendant.)	
)	

JURY INSTRUCTIONS

Members of the jury, you have seen and heard all of the evidence and the arguments of the attorneys. Now I will instruct you on the law that applies to this case.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in this case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

You must perform your duties fairly and impartially. In deciding your verdict, you must not allow sympathy, bias, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex. The parties to this case and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law that I give you, and reach a just verdict regardless of the consequences.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be. It is not my function to determine the facts in this case. That function belongs to you.

You should consider and decide this case as an action between persons of equal standing in the community and holding the same or similar stations in life. Each party is entitled to the same fair consideration. A municipal corporation is entitled to the same fair consideration as a private individual. All persons and municipal corporations stand equal before the law and are to be dealt with as equals in a court of justice.

As I stated earlier, it is your duty to determine the facts. In determining the facts, you must consider only the evidence that I have admitted in the case. The evidence consists of the testimony of the witnesses, testimony that was read to you from depositions, the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that certain facts are true or that a person would have given certain testimony.

Certain things are not evidence. I will list them for you.

First, testimony and exhibits that I struck from the record, or that I told you to disregard, are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, television, or Internet reports that you may have seen or heard. Such reports are not evidence, and your verdict must not be influenced in any way by such publicity.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements and arguments to you are not evidence. The purposes of these statements and arguments is to discuss the issues and the evidence. If the evidence as you remember it is different from what the lawyers said, your memory is what counts.

Some of you may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence. In other words it is proof of one or more facts that point to the existence or non-existence of another fact. You are to consider both direct and circumstantial evidence. The law allows you to give equal weight to both types of evidence, but it is up to you to decide how much weight to give to any evidence in the case.

You are to consider all of the evidence in determining your verdict. However, this does not mean that you must accept all of the evidence as true or accurate.

You should use common sense in considering the evidence, and you should consider the evidence in light of your own observations in life.

In our lives, we sometimes look at one fact and conclude from that fact that another fact exists. In law we call this an “inference.” You are allowed to make reasonable inferences. Any inferences that you make must be reasonable and must be based on the evidence in the case.

In determining the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. You will also have to decide what weight, if any, to give to the testimony of each witness.

In considering the testimony of any witness, you may take into account:

- the opportunity and ability of the witness to see or hear or know the things that the witness testified about;
- the witness's age;
- the witness's memory;
- the witness's intelligence;
- any interest the witness may have in the outcome of the case, and any bias or prejudice the witness may have;
- the witness's manner while testifying;
- the reasonableness of the witness's testimony in light of all the evidence in the case; and
- any other factors that bear on believability.

The weight of the evidence as to a particular fact does not necessarily depend on the number of witnesses who testify. You may find the testimony of a smaller number of witnesses to be more persuasive than that of a greater number.

A witness may be discredited or “impeached” by contradictory evidence, by, among other things, a showing that he or she testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something that is inconsistent with the witness’s testimony.

If you believe that any witness has been impeached, then you must determine whether to believe the witness’s testimony in whole, in part, or not at all, and how much weight to give to that testimony.

It is proper for an attorney to interview a witness for the purpose of learning what testimony the witness will give. The fact that the witness has talked to an attorney does not, by itself, reflect negatively on the truth of the witness's testimony.

You have heard a witness give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such a person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in the case.

During the trial, certain testimony was presented to you by the reading of a deposition. Deposition testimony is entitled to the same consideration as testimony that was given in court. You are to judge its truthfulness and accuracy, and you are to weigh and consider it, insofar as possible, in the same way as if the witness had been present and testified from the witness stand.

In a civil lawsuit like this one, the burden is on the plaintiff to prove every essential element of the plaintiff's claim by a "preponderance of the evidence."

A preponderance of the evidence simply means evidence that persuades you that the plaintiff's claim is more likely true than not true.

In deciding whether any fact has been proven by a preponderance of the evidence, you may, unless otherwise instructed, consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them.

If the proof establishes each essential element of the plaintiff's particular claim by a preponderance of the evidence, then you should find for the plaintiff as to that claim unless the defendant establishes by a preponderance of the evidence the applicable affirmative defense to that claim.

If the proof fails to establish any essential element of the plaintiff's claim by a preponderance of the evidence, then you should find for the defendant as to that claim.

Title VII of the Civil Rights Act of 1964

Plaintiff Dierdre Pawell has brought this lawsuit under a federal law known as Title VII of the Civil Rights Act of 1964. Title VII, as I will refer to this law, provides that an employer may not discriminate against an employee “because of” or “on the basis of” her sex. When I say “because of” or “on the basis of sex,” this includes discrimination on the basis of pregnancy, childbirth, or related medical conditions. Title VII also prohibits harassment on the basis of sex and prohibits retaliation for complaining about discrimination or harassment.

I will discuss each of these claims—discrimination, harassment, and retaliation—separately.

Mrs. Pawell's Claims

In this case, Mrs. Pawell makes three separate claims against MPEA. Each of these claims is brought under Title VII. You must consider each of these claims separately and render a verdict as to each of them.

On her first claim, Mrs. Pawell alleges that MPEA discriminated against her based on her sex by placing her on light duty during her 2001 pregnancy. This is referred to as her discrimination claim.

On her second claim, Mrs. Pawell alleges that MPEA, through both Mrs. Pawell's supervisor(s) and co-workers, subjected her to a hostile work environment in which she was harassed based on her sex. This is referred to as her hostile environment harassment claim.

On her third claim, Mrs. Pawell alleges that MPEA retaliated against her for complaining about the harassment and the discrimination by transferring her to McCormick Place against her will. This is referred to as her retaliation claim.

MPEA denies that it discriminated against Mrs. Pawell, denies that it subjected Mrs. Pawell to a hostile environment, and denies that it took any action against Mrs. Pawell in retaliation for her alleged complaints of harassment or discrimination.

Elements of Mrs. Pawell's Discrimination Claim

In order for Mrs. Pawell to establish that MPEA is liable for discrimination, Mrs. Pawell must prove each of the following elements by a preponderance of the evidence:

First, that MPEA placed Mrs. Pawell on light duty contrary to her desire during her 2001 pregnancy.

Second, that Mrs. Pawell's sex or pregnancy, and not merely the restrictions in the doctor's note MPEA required, was a substantial or motivating factor that prompted MPEA to place Mrs. Pawell on light duty contrary to her desire during her 2001 pregnancy.

Mrs. Pawell's sex or pregnancy was a substantial or motivating factor if her sex or pregnancy, and not merely the restrictions in the doctor's note, played a part in MPEA's decision to place her on light duty contrary to her desire. However, Mrs. Pawell's sex or pregnancy need not have been the only reason for MPEA's decision to place her on light duty contrary to her desire. You may find that Mrs. Pawell's sex or pregnancy was a substantial or motivating factor in MPEA's decision to place her on light duty if Mrs. Pawell has proven by a preponderance of the evidence that MPEA's stated reason for its decision—the restrictions in the doctor's note—is not the true reason but is a pretext to hide sex discrimination.

If you find that Mrs. Pawell has proven each of these elements by a preponderance of the evidence, then you must find for Mrs. Pawell on her discrimination claim.

If, on the other hand, you find that Mrs. Pawell has failed to prove either of these elements by a preponderance of the evidence, then you must find for MPEA on Mrs. Pawell's discrimination claim.

Jury's Consideration Regarding Sex or Pregnancy Discrimination

You are not to be concerned with whether MPEA's decision to place Mrs. Pawell on light duty during her 2001 pregnancy was wise, reasonable, or fair, and you may not substitute your own views of good business judgment for those of MPEA. Rather, your sole consideration is whether Mrs. Pawell's sex or pregnancy was a substantial or motivating factor in MPEA's decision to place her on light duty.

The decision to work while pregnant is reserved for each individual woman to make for herself. Under Title VII, employers are not required to give pregnant women special treatment. Employer must only treat pregnant women the same as all other employees. Unless an employer has a good-faith basis, supported by sufficiently strong evidence, that the normal inconveniences of the employee's pregnancy will require special treatment, an employer cannot take anticipatory action regarding a pregnant woman.

Two Types of Hostile Environment Harassment

Mrs. Pawell's second claim alleges that MPEA subjected her to a hostile work environment. Mrs. Pawell claims that she was subjected to sex-based harassment by both co-workers and a supervisor or supervisors at MPEA. The law treats acts by co-workers and supervisors differently. For this reason, I will give you separate instructions describing how you must evaluate each part of Mrs. Pawell's hostile environment harassment claim.

**Elements of Mrs. Pawell's Hostile Environment
Harassment By Supervisor(s) Claim**

In order for Mrs. Pawell to establish her claim of hostile work environment sexual harassment based on the actions of her supervisor, Mrs. Pawell must prove each of the following elements by a preponderance of the evidence:

First, that Mrs. Pawell was subjected to a hostile work environment, as defined in instruction number 20, by her supervisor(s), as I will define in instruction number 21.

Second, that such conduct was unwelcome.

Third, that such conduct was based on Mrs. Pawell's sex.

Fourth, that such conduct was sufficiently severe or pervasive that a reasonable person in Mrs. Pawell's position would find her work environment to be hostile.

Fifth, that at the time such conduct occurred and as a result of such conduct, Mrs. Pawell believed her work environment to be hostile.

If you find that Mrs. Pawell has proven each of these elements by a preponderance of the evidence, then you must find for Mrs. Pawell on her hostile work environment sexual harassment claim based on the acts of her supervisor(s) unless you find that MPEA has proven by a preponderance of the evidence the affirmative defense that I will describe in instruction number 19.

If you find that Mrs. Pawell has failed to prove any of these elements by a preponderance of the evidence or if MPEA has proven by a preponderance of the evidence the affirmative defense that I will describe in instruction number 19, then you must find for MPEA on Mrs. Pawell's hostile work environment sexual harassment claim based on the acts of her supervisor(s).

Affirmative Defense to Supervisor Harassment

As to MPEA's affirmative defense, MPEA bears the burden of proof. If MPEA has proven both of the following by preponderance of the evidence, your verdict must be for MPEA on Mrs. Pawell's claim of sexual harassment based on the acts of her supervisor(s):

First, that MPEA had installed a readily accessible and effective policy for reporting and resolving complaints of sexual harassment; and

Second, that Mrs. Pawell unreasonably failed to take advantage of that employer-provided preventive or remedial apparatus.

When a Work Environment is Hostile

In order for a work environment to be hostile, it must be so severe or pervasive as to alter the conditions of the plaintiff's employment and create an abusive working environment. Whether sexual harassment at the workplace is sufficiently severe or pervasive to affect seriously the psychological well-being of employees is a question to be determined in light of the totality of the circumstances. Different treatment regarding the terms and conditions of employment cannot be considered to establish a hostile work environment.

In determining whether a reasonable person in Mrs. Pawell's circumstances would find her work environment to be hostile or abusive, the relevant factors to consider include: (1) the frequency of the discriminatory conduct; (2) its severity; (3) whether it is physically threatening or humiliating, or a mere offensive utterance; (4) whether it unreasonably interferes with an employee's work performance; and (5) the social context in which events occurred.

“Supervisor” Under Title VII

Under Title VII, a supervisor of Mrs. Pawell must have had the power to directly affect the terms and conditions of Mrs. Pawell’s employment, such as the authority to hire, fire, promote, discipline, transfer, or reassign Mrs. Pawell. If a person has the ability to recommend any of these to a superior and the superior merely adopts the recommendation without making an independent decision, the person making the recommendation may be a supervisor. An employee who merely has authority to oversee aspects of another employee’s job performance does not qualify as a supervisor. It does not matter whether the supervisor actually exercised the power described above—just that the supervisor had the power to take actions of the type described.

Elements of Mrs. Pawell's Hostile Environment Harassment By Co-Workers Claim

In order for Mrs. Pawell to establish her claim of hostile work environment sexual harassment based on the actions of one or more of her co-workers, Mrs. Pawell must prove each of the following elements by a preponderance of the evidence:

First, that Mrs. Pawell was subjected to a hostile work environment, as defined in instruction number 20, by one or more of her co-workers.

Second, that such conduct was unwelcome.

Third, that such conduct was based on Mrs. Pawell's sex.

Fourth, that such conduct was sufficiently severe or pervasive that a reasonable person in Mrs. Pawell's position would find her work environment to be hostile.

Fifth, that at the time such conduct occurred and as a result of such conduct, Mrs. Pawell believed her work environment to be hostile.

Sixth, that MPEA knew or should have known of the conduct Mrs. Pawell alleges to be harassment based on her sex.

Seventh, that MPEA failed to take prompt and appropriate corrective action to end the harassment.

If you find that Mrs. Pawell has proven each of these elements by a preponderance of the evidence, then you must find for Mrs. Pawell on her hostile work environment sexual harassment claim based on the acts of her co-workers.

If, on the other hand, you find that Mrs. Pawell has failed to prove any of these elements by a preponderance of the evidence, then you must find for MPEA on Mrs. Pawell's hostile work environment sexual harassment claim based on the acts of her co-workers.

Municipal Corporate Responsibility

Defendant MPEA is a municipal corporation and a unit of local government that can act only through its agents or employees who are authorized, or reasonably appear to be authorized, to act on behalf of the municipal corporation. An agent or employee of a municipal corporation may bind the municipal corporation by acts and statements made only while acting within the scope of the authority delegated to the agent by the municipal corporation, or within the scope of the employment duties assigned, or reasonably believed to be assigned, to the employee by the terms of employment with the municipal corporation under the law.

What this means in this case is that the acts of alleged discrimination or harassment by lower-level employees at MPEA cannot by themselves bind MPEA or render MPEA liable for the alleged sexual harassment of Mrs. Pawell. As stated earlier, what must also be proven by a preponderance of the evidence is that the alleged co-worker sexual harassment of Mrs. Pawell was not acted upon with reasonable promptness after it came to the attention of, or should have come to the attention of, a management person at MPEA who either:

- 1) had the authority at MPEA to do something about harassment, or
- 2) had the duty under the terms of his or her employment at MPEA, or was reasonably believed to have the duty, or was reasonably charged by law with having the duty, to pass information of alleged harassment to a person at MPEA who had the authority to do something about it.

After MPEA becomes aware, or should have become aware, of co-worker harassment, it is charged with the responsibility of taking appropriate corrective action.

Elements of Mrs. Pawell's Retaliation Claim

In order for Mrs. Pawell to establish her claim of retaliation, Mrs. Pawell must prove each of the following elements by a preponderance of the evidence:

First, that Mrs. Pawell complained to MPEA or the Equal Employment Opportunity Commission that she was being harassed or discriminated against on the basis of her sex or pregnancy.

Second, that Mrs. Pawell reasonably believed that she was being harassed or discriminated against on the basis of her sex or pregnancy.

Third, that Mrs. Pawell's transfer to McCormick Place in April 2003 was contrary to her desire.

Fourth, that Mrs. Pawell's complaint(s) to MPEA or the Equal Employment Opportunity Commission of harassment or discrimination on the basis of her sex or pregnancy were a motivating factor in MPEA's decision to transfer her to McCormick Place in April 2003.

If Mrs. Pawell has not proven any of the above elements by a preponderance of the evidence, your verdict must be for MPEA, and you need not proceed further in considering this claim. In addition, your verdict must be for MPEA if it has proven by a preponderance of the evidence that it would have transferred Mrs. Pawell to McCormick Place even if she had not complained to MPEA or the Equal Employment Opportunity Commission of harassment or discrimination on the basis of her sex or pregnancy.

You may find that Mrs. Pawell's complaint(s) of harassment or discrimination was a motivating factor in MPEA's decision to transfer her to McCormick Place against her wishes if Mrs. Pawell has proven by a preponderance of the evidence that MPEA's stated reasons for its decision are not the true reasons but are a pretext to hide discrimination.

Evidence

Mrs. Pawell is not required to produce direct evidence that her sex, pregnancy, or related medical condition was a substantial or motivating factor in MPEA's decisions to force her into light duty or to transfer her against her wishes to McCormick Place. Discrimination is seldom admitted but is a fact you may infer from the existence of other facts. You may find that sex and pregnancy-related conditions were a substantial or motivating factor if you find that MPEA's stated reason for its decisions are not the true reasons but are a "pretext" to hide discriminatory motivation.

Damages

I must now instruct you on damages. You should not interpret the fact that I am giving instructions about damages as an indication in any way that I believe that Mrs. Pawell is entitled to damages.

It is your task first to decide whether MPEA is liable on Mrs. Pawell's claims. I am instructing you on damages only so that you will have guidance in the event you decide that MPEA is liable and that Mrs. Pawell is entitled to recover money from MPEA on one or more of her claims. If you decide for Mrs. Pawell on any of her claims, you may not deny or limit Mrs. Pawell's right to any recovery of damages, that you otherwise find she should be awarded, because of any injury or condition Mrs. Pawell had resulting from a pre-existing condition which caused Mrs. Pawell to be more susceptible to injury than other persons might be.

Actual Damages

If you find in favor of Mrs. Pawell and against MPEA as to each of the elements of Mrs. Pawell's discrimination, hostile environment harassment, or retaliation claims, then you should award Mrs. Pawell such sum of money as you find by a preponderance of the evidence will fairly and justly compensate her for any damages you find she sustained as a direct result of the claim or claims for which you have found MPEA liable. These are called actual damages. Mrs. Pawell's claim for actual damages includes distinct types of damages, and you must consider them separately.

If you find MPEA liable on Mrs. Pawell's discrimination claim, you must first determine the amount of any wages and benefits, including overtime, Mrs. Pawell would have earned had she not been placed on light duty during her 2001 pregnancy. Then you must determine the amount of any other damages sustained by Mrs. Pawell, such as medical costs and mental health costs she incurred as a direct result of being placed on light duty during her 2001 pregnancy. The fact that Mrs. Pawell may have received worse work assignments, was denied a shift change request, was delayed payment for her lunch break, or did not receive as many overtime assignments at Navy Pier as she believes she should have may be considered by you as evidence, among other evidence, for Mrs. Pawell's discrimination claim based on her placement on light duty but are not by themselves actionable and cannot by themselves be considered in determining the amount of damages, if any, you find Mrs. Pawell should recover in this case.

If you find MPEA liable on Mrs. Pawell's hostile environment harassment claim, you must first determine the amount of any wages and benefits, including overtime, Mrs. Pawell would have earned in her employment with MPEA if she had not been subjected to sexual harassment hostile environment. Then you must determine the amount of any other damages sustained by Mrs. Pawell, such as medical costs and mental health costs she incurred as a direct result of sexual harassment hostile environment.

If you find MPEA liable on Mrs. Pawell's retaliation claim, you must first determine the amount of any wages and benefits, including overtime, Mrs. Pawell would have earned in her employment with MPEA if she had not been transferred to McCormick Place. Then you must determine the amount of any other damages sustained by Mrs. Pawell, such as medical costs and mental health costs she incurred as a direct result of being forced to transfer to McCormick Place.

Compensatory Damages

In addition to actual damages, if you find in favor of Mrs. Pawell on any of her claims, then you may award Mrs. Pawell such sum as you find by a preponderance of the evidence will fairly and justly compensate Mrs. Pawell for her emotional distress, pain, suffering, inconvenience, humiliation, and loss of enjoyment of life caused by the discrimination, hostile environment harassment, or retaliation. These damages are called compensatory damages.

Determining Damages

If you decide to award any damages, you should be guided by dispassionate common sense. You may not award Mrs. Pawell any damages for the purpose of punishing MPEA.

Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. In order to be recoverable, damages must be actual, and neither speculative, remote, nor uncertain. On the other hand, mere difficulty in ascertaining the amount of damages is not fatal. The law does not require that a plaintiff prove the amount of damages with mathematical precision but only with as much definiteness as circumstances permit.

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in court.

As I stated, verdict forms have been prepared for you.

These forms will be brought to you in the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date each form, and each of you will sign it.

In considering each of Mrs. Pawell's claims, you, as the jury, in reaching your verdict, should consider each claim, and the verdict form pertaining to that claim, separately from each of the other claims and verdict forms in the case. In other words, consider each claim one at a time. Please follow the instructions pertaining to each claim and answer each question you are asked to answer on each verdict form.

When you have reached unanimous agreement as to your answers regarding a claim, you may want to take the official verdict form and mark your answer to each question on that form, and each of you should sign that official verdict form as to that claim before you go on to consider Mrs. Pawell's next claim.

During the trial, some of you from time to time may have made notes. If you did make notes, please remember in using the notes during your deliberations that the notes are not evidence. Your notes are merely an aid to you in remembering the evidence. Also, you should not be unduly influenced by the notes of other jurors. A juror's notes are not entitled to any weight if the notes are inconsistent with the collective recollections of the members of the jury as to the evidence in the case. You as the jury should rely on your collective recollections of the evidence in reaching your verdict in this case.

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the court security officer. I will photocopy your communication, give it to counsel, and allow counsel to meet with me here in open court, as required by the law, before I respond to your communication.

If any communication is made, it should not indicate your numerical division.

Neither in these instructions nor in any ruling, action, or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

The verdict must represent the considered judgment of each juror. Your verdict must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the views of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or solely for the purpose of returning a unanimous verdict.

All of you should give fair consideration to all the evidence and deliberate with the goal of reaching a verdict which is consistent with the individual judgment of each juror. You are impartial judges of the facts. Your sole interest is to determine the truth from the evidence in the case.

Further Jury Instruction in Response to Jury's Question

The phrase “A readily accessible and effective policy for reporting and resolving complaints of sexual harassment,” as used in the jury instructions and on the verdict form, means that MPEA had a policy in place for employees who claimed they were victims of sexual harassment that was available to MPEA employees and that MPEA’s policy provided for a meaningful process for the employees to be able to express their claims of sexual harassment in the workplace in a manner that was designed to have the employees’ claims resolved with reasonable care to prevent sexual harassment in the MPEA workplace.

To be effective, MPEA’s policy must have effective grievance mechanisms that are communicated to its employees and are used in a manner to reasonably prevent sexual harassment in the MPEA workplace. The law does not require that MPEA’s policy be at all times successful in preventing sexual harassment. The law only requires that MPEA act reasonably to prevent sexual harassment. However, the mere creation of a sexual harassment policy will not shield MPEA from its responsibility to actively prevent sexual harassment in the workplace.

In reaching your verdict in this case, you should consider this further instruction that I am now giving you along with all the other instructions I previously gave you.