"Sergeant Schultz Response" Not an Option for Supervisors

Sergeant Schultz on the television series "Hogan's Heroes" is probably best known for avoiding his obligation to investigate or report matters to his superiors by stating forcefully: "I know nothing! Nothing!" Living a charmed sitcom life, Schultz was not called to account for these failures. Supervisors today, however, cannot afford to follow Sergeant Schultz's approach. In a recent real-world case involving sexual harassment, a supervisor (Jakubek) adopted the "Sergeant Schultz approach" when a female employee (Duch) requested that she have the day off on a day when she was assigned work alone on a Saturday with a male co-worker (Kohn). She did not inform Jakubek that Kohn was the reason she wanted the day off. After receiving that request from Duch, Jakubek asked Kohn why Duch would feel uncomfortable working with him. Kohn responded "well, maybe I did something or said something that I should not have." Jakubek then asked Duch if she had a problem working with Kohn. Duch, after becoming teary and red, responded by saying "I can't talk about it." Jakubek replied, "That's good because I don't want to know what happened." After this exchange, Jakubek offered to change Duch's schedule to avoid her working alone at night with Kohn and thereafter did so. However, Jakubek did not take steps to investigate further the reason for Duch's request. Duch ultimately filed a hostile work environment claim in federal district court. That court granted summary judgment in favor of the defendants.

Duch appealed to the Circuit Court of Appeals which overturned the summary judgment. In doing so, the Court noted that in order to prevail on a hostile work environment claim, a plaintiff must, among other things, make a showing that there is a "specific basis for imputing the conduct creating the hostile work environment to the employer." In this case, only the question of imputing the conduct of Kohn was at issue. The Court fount that in a situation such as this, "when the harassment is attributable to a coworker, rather than a supervisor, . . . the employer will be held liable only for its own negligence." Such liability will ensue only if Duch demonstrates that her employer "failed to provide a reasonable avenue for complaint" or that "it knew, or in the exercise of reasonable care should have known, about the harassment yet failed to take appropriate remedial action."

The Court found that there were ample avenues for complaint. The Court also concluded that a jury could reasonably find that Jakubek strongly suspected that sexual harassment on Kohn's part was responsible for Duch's emotional reaction when asked if she had a problem working with Kohn. A jury could further find that the indications of possible sexual harassment were sufficiently strong enough to impose on Jakubek a duty to make at least a minimal effort to discover whether Kohn had engaged in sexual harassment. Instead of encouraging Duch to discuss the problem, Jakubek discouraged her from revealing the harassment. Given the foregoing, the Court held that a reasonable jury could conclude that Duch's employer had at least constructive knowledge of the sexual harassment of Duch by Kohn. *Duch v. Jakubek*, No. 07-3503-cv (2nd Cir. Dec. 4, 2009)

As this case clearly reflects, supervisors cannot adopt the Sergeant Schultz approach in situations where they have reason to suspect that sexual harassment may be involved. It is not necessary that a victim of sexual harassment explicitly mention sexual harassment in order to impose a duty on the supervisor to investigate. Failure to do so may result in a lawsuit and liability for the University.