

May 20, 2002

Honorable Board of Supervisors
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: **Lourdes Armida Tamayo v. County of Los Angeles**
Los Angeles Superior Court Case No. BC 216 080

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of \$150,000.00.
2. The Auditor-Controller be directed to draw warrants to implement this settlement from the Department of Health Services.

Enclosed is the settlement request and a summary of the facts of the case.

Also enclosed, for your information, is the Corrective Action Report submitted by the Department of Health Services.

Return the executed, adopted copy to Frances Lunetta, Suite 648 Kenneth Hahn Hall of Administration, Extension 4-1754.

Very truly yours,

Barbara N. Uyeda, Chairperson
Los Angeles County Claims Board

BNU/fsl

Enclosure

MEMORANDUM

May 13, 2002

TO: LOS ANGELES COUNTY CLAIMS BOARD

FROM: STEVEN D. MANNING, Esq.
Manning & Marder, Kass, Ellrod, Ramirez

GARY N. MILLER
Principal Deputy County Counsel

RE: Lourdes Armida Tamayo v. County of Los Angeles
Los Angeles Superior Court Case No. BC216080

DATE OF INCIDENT: March 1997, through October 22, 1999

AUTHORITY REQUESTED: \$150,000

COUNTY DEPARTMENT: DEPARTMENT OF HEALTH SERVICES

CLAIMS BOARD ACTION:

Approve

Disapprove

Recommend to Board of Supervisors for Approval

BARBARA N. UYEDA

, Chief Administrative Office

LLOYD W. PELLMAN

, County Counsel

MARIA M. OMS

, Auditor-Controller

on _____, 2002

SUMMARY

This is a recommendation to settle for \$150,000 the sexual harassment lawsuit covering the period March 1997, through October 22, 1999, brought by Lourdes Tamayo, a Patient Financial Services Worker at LAC+USC Medical Center.

LEGAL PRINCIPLES

The County is strictly liable for a supervisor's sexual harassment. Additionally, the County may be held liable for harassment where the harassment is sufficiently pervasive so as to alter an employee's environment and create an abusive working environment (hostile work environment).

SUMMARY OF FACTS

In October 1979, Lourdes Tamayo began working for the County of Los Angeles as an Eligibility Worker. In September 1988, she was promoted to Patient Financial Services Worker, and on March 3, 1997, she was assigned as a Patient Financial Services Worker in the Emergency Room at LAC+USC Medical Center.

On March 19, 1997, Lourdes Tamayo orally complained to the Admitting Supervisor and the Head Clerk assigned to the Emergency Room at LAC+USC Medical Center that co-workers and a supervisor were making derogatory comments suggesting that certain parts of Lourdes Tamayo's anatomy had been surgically augmented.

On March 21, 1997, the Admitting Supervisor and the Head Clerk met with Lourdes Tamayo and two of Lourdes Tamayo's co-workers. Although the two co-workers denied making any derogatory comments, both acknowledged that other co-workers were spreading rumors that Lourdes Tamayo's breasts and buttocks had been surgically augmented.

On March 25, 1997, Lourdes Tamayo filed a written complaint with the Admitting Supervisor concerning the spreading of derogatory rumors by her co-workers, which she characterized as sexual harassment. In addition, the Revenue Manager at LAC+USC Medical Center had been informed by a Patient Resources Worker that male employees in the Emergency Room were spreading rumors about Lourdes Tamayo's breasts, and that several female employees were circulating the rumors among themselves. Because the Admitting Supervisor believed that the matter had been resolved during the meeting held on March 21, 1997, no action was taken to report Lourdes Tamayo's complaints to Human Resources or to the Office of Affirmative Action Compliance (OAAC).

On April 29, 1997, Lourdes Tamayo complained to the Billing Supervisor at LAC+USC Medical Center about continuing derogatory remarks by co-workers regarding Lourdes Tamayo's surgically augmented anatomy. On that date, Human Resources was notified of Lourdes Tamayo's complaint. Sometime thereafter, the OAAC orally advised Human Resources that remarks by co-workers regarding Lourdes Tamayo's anatomy were clearly inappropriate, but probably did not constitute sexual harassment under current guidelines established by the Equal Employment Opportunity Commission (EEOC). Based on the statements given by the OAAC, a memorandum was sent to the staff that same day advising that the spreading of such remarks was inappropriate and should stop.

On July 11, 1997, the Revenue Manager was advised by the Chicano Employees Association (CEA) that Lourdes Tamayo had filed a complaint alleging racial discrimination and sexual harassment. Although the CEA had decided to withdraw the racial discrimination complaint, the CEA requested the Revenue Manager to investigate Lourdes Tamayo's complaints of sexual harassment. On that date, the Revenue Manager requested Human Resources to conduct an investigation into Lourdes Tamayo's complaint of sexual harassment. Human Resources conducted an interview of two individuals on July 24, 1997. However, no further investigation or interviews were conducted by the department until December 17, 1997.

On January 29, 1998, Human Resources submitted a report of its findings regarding Lourdes Tamayo's complaints of sexual harassment to the OAAC. On March 18, 1998, the OAAC issued a recommendation that appropriate action be taken against Lourdes Tamayo's co-workers responsible for the remarks concerning her anatomy. However, the OAAC did not believe that such remarks constituted sexual harassment under guidelines established by the EEOC.

On April 10, 1998, Lourdes Tamayo was advised by Human Resources that comments about her anatomy had probably been made, and that appropriate administrative action would be taken.

On August 4, 1999, Lourdes Tamayo filed a complaint with the Department of Fair Employment and Housing (DFEH) alleging sexual harassment based on derogatory comments made by co-workers about certain parts of her anatomy. On February 22, 2000, the DFEH issued Lourdes Tamayo a Right to Sue Letter.

Lourdes Tamayo was off work from October 22, 1999, through December 19, 2001, due to emotional distress. She currently works at Women's and Children's Hospital at LAC+USC Medical Center.

DAMAGES

If this matter proceeds to trial, the claimant will likely seek the following:

Lourdes Tamayo,	
Emotional Distress	\$ 750,000
Civil Rights Attorneys Fees	\$ 400,000
Costs of Litigation	<u>\$ 30,000</u>
TOTAL	\$1,180,000

The proposed settlement includes:

Lourdes Tamayo,	
Cash Settlement	\$ 80,000
Attorneys Fees	\$ 40,000
Costs of Litigation	<u>\$ 30,000</u>
TOTAL	\$150,000

STATUS OF CASE

The current trial date has been vacated pending approval of this settlement.

The County filed a Motion for Summary Judgment during the defense of this matter, contending that statements that certain parts of Lourdes Tamayo's anatomy had been surgically augmented did not constitute sexual harassment. The court denied the County's Motion, and stated that comments by a supervisor and/or co-workers about an individual's personal body parts, such as breasts and buttocks, amounts to sexually hostile behavior.

Expenses incurred by the County of Los Angeles in the defense of this case through April 26, 2002, are attorneys fees of \$199,051.25 and \$64,723.13 in costs.

The total cost to the County of Los Angeles, as a result of this settlement, is as follows:

Indemnity (Settlement Amount)	\$150,000.00
County Attorneys Fees and Costs	<u>\$263,774.38</u>
TOTAL	\$413,774.38

EVALUATION

The California Fair Employment and Housing Act provides that an employer is strictly liable for a supervisor's sexual harassment. In addition, an employer may be held liable for harassment where the harassment is sufficiently pervasive so as to alter the employee's environment and create an abusive working environment (hostile work environment). Although the supervisor has denied making the statements attributed to her, based upon the trial court's prior ruling that comments by a supervisor and/or co-workers about an individual's personal body parts, such as breasts and buttocks, amounts to sexually hostile behavior, and the failure of Human Resources to conduct and complete a timely investigation of the matter, we believe that a jury may conclude that during the time that Lourdes Tamayo was employed at LAC+USC Medical Center, a hostile work environment existed due to the statements of co-workers and a supervisor regarding certain parts of Lourdes Tamayo's anatomy. Under state law, if Lourdes Tamayo were to proceed to trial and receive an award of damages, she would be entitled to attorney's fees. Further, we believe that the jury award of damages and the attorneys fees award will far exceed the recommended settlement amount.

We join with our private counsel, Manning & Marder, Kass, Ellrod, Ramirez, and our claims administrator, Octagon Risk Services, Inc., in recommending settlement in the amount of \$150,000.

The Department of Health Services concurs in this recommendation.

LOS ANGELES COUNTY - DEPARTMENT OF HEALTH SERVICES
INSPECTION AND AUDIT DIVISION

Subject: LAC+USC Medical Center - Sexual Harassment Lawsuit

Name: Lourdes Tamayo
ORS #2099

PURPOSE:

To determine if corrective actions have been taken by the LAC+USC Medical Center relative to issues identified as a result of a sexual harassment/retaliation lawsuit filed against the County.

SCOPE:

Interviews were conducted with the DHS Quality Improvement Program (QIP) staff. In addition, all available documents, reports, and memoranda were reviewed.

FINDINGS:

The following are the facility's issues and corrective actions followed by the Inspection and Audit Division findings. These are classified as either Systems or Personnel.

SYSTEMS

Issue #1

The Department failed to perform a timely and proper investigation.

Corrective Action

Facility:

- Seventeen LAC+USC employees, including ten or 100% of the Discipline staff, attended the Office of Affirmative Action Compliance (OAAC's) Employment Discrimination Complaint Process Investigator Certification Training Program between August 27, 2001 and November 1, 2001.
- The PO II issued a directive to the Discipline staff advising them of their workload priorities on February 12, 2002. The PO II issued a memo on March 27, 2002 documenting his approach for strengthening the investigation tracking system. The facility submitted a budget request for fiscal year 2002-03 identifying the need for additional Human Resources' investigative positions.

DHS System-wide:

- The Department distributed the OAAC's new Sexual Harassment Brochure to all staff in late September through October 2000. DHS continues to provide Sexual Harassment Prevention Training for its employees. On April 6, 2000, the Department's Human Resources

Managers were instructed to incorporate the video "Sexual Harassment: Is It or Isn't It for Health Care" into all

future sexual harassment training sessions. Between September 1998 and January 2002, OAAC conducted 390 training sessions for 8,872 DS employees.

· The Department revised its Sexual Harassment Policy effective August 15, 2001 to be consistent with the OAAC's Sexual Harassment brochure. On July 31, 2001, Corporate HR asked the DHS Human Resources Managers to distribute the policy to all employees. It was added to the policies that employees review annually upon receipt of their performance evaluation and to the policies distributed to incoming employees.

· DHS distributed the new Management Appraisal Performance Plan goals to all participants on November 5, 2001, which included a Fundamental Performance Expectation for compliance with OAAC's Employment Discrimination Complaint Process and provided them with a copy of the process in January 2002.

- A total of 86 DHS employees attended the OAAC's Employment Discrimination Complaint Process Investigator Certification Training Program between August 27, 2001 and November 1, 2001.
- Corporate HR submitted a budget request for fiscal year 2002-03 for additional facility staff needed to comply with the OAAC's standards.
- Corporate HR issued a April 9, 2002 memo to the DHS HR Managers regarding investigation priorities.

Inspection and Audit Division Findings

Implemented.

The Inspection and Audit Division reviewed documentation which verifies the following:

· Seventeen LAC+USC employees, including ten (100%) of the Discipline staff, attended the OAAC's Employment Discrimination Complaint Process Investigator Certification Training Program between August 27, 2001 and November 1, 2001.

· The Personnel Officer issued a directive on February 12, 2002 to the Discipline staff advising them of their workload priorities, and issued a memo on March 27, 2002 documenting his approach for strengthening the investigation tracking system.

· The facility identified the need for additional Human Resources' investigative positions in its budget request for Fiscal Year 2002-03.

· The Department distributed the OACC's new Sexual Harassment Brochure to all staff in late September through October 2000. The Department also provides Sexual Harassment Prevention Training for its employees. On April 6, 2000, the Department's Human Resources Managers were instructed to incorporate the video "Sexual Harassment: Is It or Isn't It for Health Care" into all future sexual harassment training sessions. Between September 1998 and January 2002, OAAC conducted 390 training sessions for 8,872 DHS employees.

· The Department revised its Sexual Harassment Policy effective August 15, 2001 to be consistent with the OAAC's Sexual Harassment brochure. On July 31, 2001, the Corporate Office of Human Resources Management (COHRM) requested the Department's Human Resources Managers to distribute the policy to all employees, to include it to the policies that employees review annually with their performance evaluations, and to the policies distributed to incoming employees.

· DHS distributed the new Management Appraisal Performance Plan (MAPP) goals to all participants on November 5, 2001, which included a Fundamental Performance Expectation for compliance with OAAC's Employment Discrimination Complaint Process. A copy of the process was provided to MAPP participants in January 2002.

- Eighty-six DHS employees attended the OAAC's Employment Discrimination Complaint Process Investigator Certification Training Program between August 27, 2001 and November 1, 2001.
- COHRM submitted a budget request for fiscal year 2002-03 for additional facility staff needed to comply with the OAAC's standards.
- COHRM issued a memo on April 9, 2002 to the DHS Human Resources Managers regarding investigation priorities.

PERSONNEL:

Issue 1:

A supervisor participated in creating a hostile work environment.

Corrective Action

· A general warning dated April 29, 1997 was sent to all staff in the ER about making derogatory remarks. The Acting Supervisor and Patient Resources Worker (PRW) received a copy of the memo.

· The staff involved, as well as, supervisors and managers, were required to attend Sexual Harassment Prevention Training between July 16, 1999 and March 22, 2000. In addition, the immediate Patient Financial supervisors and managers attended Discrimination Prevention Training between January 20 and May 19, 2000. The Acting Supervisor attended Employee Evaluation and Discipline Guidelines Training on April 4, 2002. As of December 31, 2001, 4,272 LAC+USC Medical Center employees have received Sexual Harassment training. The Department's updated Sexual Harassment Policy was distributed to all LAC+USC staff on April 15, 2002.

· The Acting Supervisor was given a Corrective Action notice advising her to correct her performance when interacting with subordinates.

Inspection and Audit Division Findings

Implemented.

- An April 29, 1997 memo sent to PFS staff about making derogatory remarks was signed as received by the Supervisor and PRW.

- Log sheets were reviewed which confirmed attendance at Sexual Harassment training by the Supervisor and PRW. The Department's Sexual Harassment Policy was distributed to all LAC+USC staff on April 15, 2002.

- A notice to take corrective action, memo dated August 31, 2001, was signed as received by the Supervisor.

Issue 2:

The Department failed to perform a timely and proper investigation.

Corrective Action

- The LAC+USC Human Resources Office was made aware of the untimely investigation in approximately December, 1998. The Senior Departmental Personnel Technician (Sr. DPT), who was absent from work due to surgery beginning November 6, 1998, indicated the delay was caused due to her involvement in other cases regarding serious threats and sexual harassment. The Sr. DPT did not return to work and retired from County service.

- All Human Resources discipline staff were required to attend the Employment Discrimination Complaint Process Investigator Certification Training conducted by the Office of Affirmative Action Compliance.

- The heavy workload in the LAC+USC Medical Center Discipline Unit and threats of impending staff reductions due to budget curtailments make it very difficult to recruit new staff. The lack of adequate staff adversely affects the ability of the Unit to do timely investigations. Consequently, on February 12, 2002, staff was advised to complete investigations of threats, violent acts and discrimination cases as a priority over lesser disciplinary actions.

Inspection and Audit Division Findings

- A review of CWTAPPS confirmed that the Sr. DPT retired from County service effective June 12, 1999.

- Log sheets were reviewed which confirmed the attendance of Discipline Unit staff in Employment Discrimination Complaint Process Investigator Certification Training conducted by the OAAC between August 27, 2001 and November 1, 2001.

- The Personnel Officer issued a directive on February 12, 2002 to the Discipline staff advising them of their workload priorities, and issued a memo on March 27, 2002 documenting his approach for strengthening the investigation tracking system.

- The LAC+USC Medical Center requested additional Human Resources' investigative positions in its budget request for Fiscal Year 2002-03.

L. Tamayo
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Summary:

Based on our review, the facility has implemented the corrective actions relative to this lawsuit filed against the County.