

The Law and Sexual Misconduct

Garrity v. New Jersey

Public employees have certain constitutional rights that apply in their employment that may not apply to private employees. For example, in *Garrity v. New Jersey*, the Supreme Court held that statements obtained in the course of an investigatory interview under threat of termination from public employment couldn't be used as evidence against the employee in subsequent criminal proceedings. If, however, you refuse to answer questions after you have been assured that your statements cannot be used against you in a subsequent criminal proceeding, the refusal to answer questions thereafter may lead to the imposition of discipline for insubordination. Further, while the statements you make may not be used against you in a subsequent criminal proceeding, they can still form the basis for discipline on the underlying work-related charge.

Vicarious Liability

Vicarious Liability may occur when someone else knew or should have known what was occurring, or was about to occur and did nothing to correct the situation, and that lack of action was the proximate cause of subsequent harm, injury or death. If you see something occurring between an offender and staff person, you should report it.

Qualified Immunity

Qualified Immunity is a special privilege or defense against civil liability. This protects government officials from civil damages, under certain circumstances. There is a two part test for Qualified Immunity.

- First: Was the law, statute, or case law governing the conduct of the government official clearly established?
- Second: Could a reasonable person have believed that his/her conduct was unlawful?

If the answer is "yes" to both questions, then the

immunity might not exist. Case Law: *Sepulveda v. Ramirez*, 9th Circuit. The Court found it unreasonable for a female offender to be observed giving a urine sample by a male officer. Case law has also established that qualified immunity does not extend to private contractors providing services to correctional agencies. Of course, it is important to check with legal counsel regarding any allegations and to review policies.

Personal Liability

Personal Liability may occur if a corrections employee or official fails to respond to allegations of misconduct, or their actions or the actions of their staff result in harm to an offender. In *Riley v. Olk-Long*, an 8th Circuit case, a warden and security director acted deliberately indifferent when they were aware of an employee's potential risk of harm to offenders. Both were found personally liable, and were fined a total of \$45,000.

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