

Considering the Costs of Signing an NDA: A Case of Workplace Sexual Harassment and Assault

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Abstract. With her heavy-equipment operator certification in hand, Fiona is a new hire on a construction crew; the only woman in a family-owned organization aside from the HR manager, the sister of the company president and vice-president. Soon after her hire, the president of the company began a pattern of sexually targeting Fiona. She went to great lengths to avoid her boss, but the harassment and assaults continued. After one incident, Fiona reported the abuse to the company VP who offered her a financial settlement in exchange for her silence. Fiona thought speaking out would put an end to the strain the abuse had caused, but other dilemmas had just begun. The case allows students to examine the competing interests Fiona faces in deciding whether to accept a financial settlement from her employer, that would greatly help her family, but at the cost of signing a non-disclosure agreement.

Keywords: termination of employment, complaint, #MeToo and #timesup, male-dominated industry, sexual misconduct, predatory behavior.

Fiona is a 27-year-old married woman with five-year-old son and a dream of being a heavy equipment operator. When she was young, Fiona marvelled at how big earthmoving machinery could sculpt the landscape. Fiona is just over 5 feet tall and likes the idea of how powerful it would feel to operate one of those machines. Plus, she hates being behind a desk and is looking for a career that will allow her to spend time outdoors doing various tasks. After completing a three-year training course to operate heavy equipment Fiona was qualified to operate articulated rock trucks, packers and graders. Although the heavy equipment industry has traditionally been a male-dominated job sector, more women are entering the field in search of better pay, employment opportunities and sense of accomplishment. Fiona was unconcerned about working primarily alongside men given her past experiences in construction traffic control after she graduated high school.

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In her search for employment, Fiona interviewed with Monty Burns who, together with his brother, Waylon, and sister, Rhonda, owns a small, local construction company, Rockridge Construction Ltd. (“Rockridge”). The siblings own equal shares in Rockridge and they each work in dual capacity for the company. Monty serves as the President and Construction Manager; Waylon as the Vice President and Estimator; and Rhonda as the Bookkeeper and HR Manager. The company has 23 full-time employees. Fiona would be the only female member of the crew but liked that it was a small company with a woman as a co-owner.

Despite her limited experience, Monty hired Fiona for the position of heavy equipment operator. He informed her that she was to work on Rockridge’s road construction contracts and residential development projects. Fiona was thrilled at the opportunity and eager to put her training to use. She saw Monty, who was several years older than her father, as a potential mentor who would give her the needed job experience and industry knowledge that she would need to succeed. After all, he did tell her, when offering her employment, that he would teach her various aspects of the job and hoped that she was “in it for the long-term”.

Within a month of her employment with Rockridge, Fiona became concerned about the increasing attention she was receiving from her boss. On one occasion, he insisted that Fiona ride with him to the community of Springfield for a crew meeting at an offsite restaurant so he could bring her “up to speed”. Fiona felt obliged, but also hoped it might be an opportunity to get some background on the project and her role. Instead, during the drive, Monty told Fiona that she was beautiful and shared that he was a very lonely man in a loveless marriage. He then reached across the seat and grabbed her hand. Fiona was very uncomfortable but let him hold her hand as she did not want to make a big deal. She simply shrugged him off. Having worked in the construction industry before, Fiona knew that inappropriate things were sometimes said and done, and she felt confident she could handle things.

After the crew meeting concluded at the restaurant, Monty asked Fiona if she would be able to stay a bit longer when they returned to the office. He wanted to go over the details of the traffic control plan for the Springfield job site that she would need to know. Although Fiona felt a bit uneasy with Monty’s request because of his previous comments and actions during the ride to the restaurant, she wanted to be a good employee and therefore, agreed. Within seconds of entering the front office, Monty grabbed Fiona from behind and tried to hug her while uttering sexual advances. Fiona instinctively pushed his hands away and sternly said that she was not interested. She made up an excuse that her husband and son were waiting outside to pick her up and hurriedly left the office.

On the way home and all night in bed, she replayed the events of the drive and what happened at the office over in her mind. Her boss’s actions were beyond anything she had experienced in her earlier construction work, and she was worried. She knew that the crew would have to stay at a motel in Springfield for