

3 questions key to Nathan Fletcher lawsuit

By Dan Eaton

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Grecia Figueroa lost her job as a Metropolitan Transit System (MTS) public relations specialist on Feb. 6, 2023, the same day County Supervisor and then-MTS Board Chairman Nathan Fletcher announced his candidacy for the California State Senate. Figueroa filed a complaint in San Diego Superior Court against MTS and Fletcher on March 28. That day, Fletcher resigned as MTS Board Chairman. He later also resigned from the Board of Supervisors.

Figueroa alleges Fletcher sent her inappropriate direct messages on her Instagram account, and eventually forced himself on her at least three times, the last time two months before she was fired.

Answers to these three questions are key to the case.

What was the nature of Fletcher's interactions with Figueroa?

Figueroa denies her interactions with Fletcher were consensual; Fletcher says they were.

Figueroa's claims for sexual harassment and failure to prevent sexual harassment are based on the California Fair Employment & Housing Act (FEHA). Figueroa will have to prove Fletcher's severe or pervasive sexual behavior toward her was (1) connected to her work and (2) unwelcome. In *Atalla v. Rite Aid Corp.*, the California Court of Appeal recently upheld dismissal of workplace sexual harassment claims against an employer based on a private relationship unconnected to the workplace that started before plaintiff's employment and on interactions that occurred outside the workplace or normal business hours. FEHA's goal "is to provide effective measures to prevent workplace harassment."

Figueroa connects Fletcher's conduct to her job by claiming she "feared she would lose her job if anyone found out she was being pressured sexually by the senior-ranking official at MTS...the Board Chair." Figueroa also claims she responded playfully to most of Fletcher's unwelcome Instagram messages because, as MTS Board Chairman, Fletcher was "the pinnacle managing agent of her employer."

In a statement, Fletcher acknowledged his interactions with Figueroa violated the "basic trust and loyalty of his marriage," but said she had mischaracterized those interactions. In the same statement, Fletcher's attorney said Fletcher "never had authority over [Figueroa's] employment" as MTS Board Chair. Without such authority, Fletcher will claim Figueroa was free to rebuff Fletcher's attention without consequences — had she wanted to do so.



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What was the nature of Fletcher's relationship with MTS?

An employer liable for sexual harassment of an employee by a non-supervisory coworker or by a nonemployee if the employer, or its agents or supervisors, knows or should have known of the conduct and fails promptly to correct it.

Where unlawful harassment is committed by a supervisor or agent of the employer, the law makes the employer "strictly" liable to the employee, that is, liable to the employee whether anyone else at the entity knew of the misconduct or not.

Fletcher was employed by the County of San Diego, not MTS. If, as Figueroa alleges, Fletcher's position as MTS Chair made him a "managing agent of MTS," that will be enough to prove MTS knew of his conduct. If not, she will have the heavier burden of proving other MTS officials knew or should have known of his allegedly unlawful conduct to establish MTS's liability.

Who at MTS knew, or should have known, of Fletcher's conduct?

Figueroa claims that even if Fletcher was not an MTS managing agent, MTS is liable because it knew or should have known of Fletcher's unlawful sexual harassment and failed to correct it. But Figueroa alleges she complained only to Fletcher himself about the behavior. She will be able to probe MTS officials about their knowledge of her interactions with Fletcher. So far, though, Figueroa only suspects what agency officials knew.

For example, Figueroa alleges her department head "seemed to notice" her interaction with Fletcher at an MTS Board meeting around September 2022, "appearing unhappy" about it. From then on, Figueroa alleges she anxiously wondered "if her entire department – or even the entire MTS organization — knew that Fletcher was pursuing her sexually."

Figueroa's sexual harassment claims do not depend on Figueroa proving MTS unlawfully fired her. Neither does Figueroa's claim against Fletcher alone for sexual assault and battery.

Figueroa's whistleblower claim, however, requires her to prove her complaint about Fletcher's behavior played some role in her termination. If no one involved in the decision to fire Figueroa knew or should have known about Fletcher's behavior or her complaint to Fletcher about it, the conduct and her complaint about it cannot have motivated her termination. It is not illegal to fire someone who complains of behavior she reasonably believed was unlawful; it is illegal to fire someone because she complained of behavior she reasonably believed was unlawful.

Something indisputably happened between Fletcher and Figueroa. Any legal consequences will depend on the answers to these and other questions.

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