

CAN A CORPORATION BE SUED UNDER THE ILLINOIS GENDER VIOLENCE ACT (740 ILCS 82/)

Plaintiff attorneys are constantly looking for loopholes to increase their recoverable damages against a defendant. In cases involving sexual assault by an employee, an attorney will sue the employee and the employer under a vicarious liability theory. In some cases, an attorney will sue under the Illinois Gender Violence Act (740 ILCS 82/)(“IGVA”), because the IGVA allows the recovery of attorneys’ fees, costs and punitive damages.

The IGVA lays out the requirements of a cause of action under the statute as follows:

Any person who has been subjected to gender-related violence as defined in Section 5 may bring a civil action for damages, injunctive relief, or other appropriate relief against a person or persons perpetrating that gender-related violence. For purposes of this Section, “perpetrating” means either personally committing the gender-related violence or personally encouraging or assisting the act or acts of gender-related violence.”740 ILCS 82/10.

Gender-related violence includes “[o]ne or more acts of violence or physical aggression satisfying the elements of battery under the laws of Illinois that are committed, at least in part, on the basis of a person’s sex,” and “[a] physical intrusion or physical invasion of a sexual nature under coercive conditions satisfying the elements of battery under the laws of Illinois.” 740 ILCS 82/5.

This is a matter of first impression, as no Illinois state court has interpreted the meaning of “person” or “persons” within the context of the IGVA. Over the last few years, the federal courts have repeatedly held that “persons” under the IGVA refers to natural persons and not corporations. *E.g. Fuesting v. Uline, Inc.*, 30 F.Supp.3d 739, 742 (N.D.Ill.2014); *Doe ex rel. Smith v. Sobeck*, 941 F.Supp.2d 1018, 1027 (S.D.Ill.2013); *Fleming v. Fireside West, LLC*, Case No. 12 C 1436, 2012 WL 6604642, *3 (N.D.Ill. Dec. 18, 2012); *Fayfar v. CF Mgmt.-IL, LLC*, Case No. 12 C 3013, 2012 WL 6062663, at *2 (N.D.Ill. Nov. 4, 2012). Most recently, the court in *Doe v. Freeburg* carefully analyzed all the cases and statutory discussions to date and concluded that the statutory construction supported a reading which interpreted “person or persons” under the IGVA as natural persons. *Doe v. Freeburg Cmty. Consol. Sch. Dist. No. 70*, No. 14-CV-674-NJR-DGW, 2015 WL 3896960, at *3 (S.D. Ill. June 23, 2015).

Our client was sued, and we filed a motion to dismiss the allegations under the IGVA, on the basis the IGVA does not apply to corporation. We argued that the term “person” or “persons” does not include corporations. We won at the trial court and plaintiff appealed. We are currently awaiting the decision from the appellate court, so stay tuned for the result.