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News For School and Municipal Clients

Discrimination Complaint Procedures for Young Employees

A recent decision issued by the Seventh Circuit Court of Appeals—the Federal appeals court that decides federal cases arising in Wisconsin—provides important guidance to employers and, in particular, employers that regularly hire students or other young employees. In *Equal Employment Opportunity Commission v. V&J Foods, Inc.*, the court considered a claim charging two forms of sex discrimination: the creation of a hostile working environment and retaliation for opposing discrimination.

In the case, Merriweather, a 16-year-old female high school student working her first paying job at a Burger King restaurant, was the victim of repeated sexual harassment by the general manager of the restaurant. Although she complained repeatedly to the shift supervisors and the assistant manager, no action was taken to stop the harassment. She asked the assistant manager for a phone number to call to complain about the harassment, but the assistant manager stated he did not know of one. Eventually, Merriweather's mother came to the restaurant and complained to a shift supervisor of the general manager's sexual harassment of her daughter. As a result, the general manager fired Merriweather. The Equal Employment Opportunity Commission (EEOC), on behalf

of Merriweather, brought a lawsuit against the owner of the restaurant.

The trial court initially dismissed the lawsuit because it concluded that Merriweather failed to invoke the company's procedure for complaining about harassment, which is a defense an employer may assert to a claim of harassment of one employee by another. It also determined that firing her because of her mother's intervention was not actionable retaliation because her mother, and not Merriweather, opposed the unlawful discrimination. The appeals court reversed the trial court's decision and clarified several rules of law applicable to all employers, but especially those that employ young employees, such as school districts and municipalities.

First, the appeals court ruled that in order for an employer to avoid liability for harassment of one employee by another, the employer must have a reasonable mechanism by which the victim of harassment can complain to the company to get relief. Whether the complaint mechanism is reasonable depends on the employment circumstances and, therefore, the capabilities of the class of employees in question. In this case, where the class of employees who needed to be able to activate the complaint procedure included teenage

girls, and it was part of the employer's business practice to employ teenage, part-time workers, *the employer was obligated to develop its complaint procedure so it could be understood by the average teenager.* The complaint procedure provided in the employee handbook, however, was confusing and unclear, did not identify a specific person to contact, and did not provide a contact phone number other than the receptionist at the company's headquarters.

The appeals court recognized that the cost to the employer of providing a clearer path for complaints of harassment needs to be weighed against the benefits, i.e., the reduction in workplace harassment. An excessively costly complaint mechanism in relation to its benefits would not be reasonable, and would not be necessary for the employer to avoid liability. In this case, however, the court determined that the employer simply could have posted a notice in the employees' room with a phone number of a designated human relations employee, of which the employer had several, which would have added only a trivial cost, or even reduced costs by reducing harassment. Therefore, the employer's complaint procedure was not reasonable, and did not protect the employer from liability for harassment of one employee by another.

Furthermore, the court took issue with a portion of the company's complaint procedure that required complaints directed to a shift supervisor or assistant manager to

be forwarded to the general manager, who, in this case, was the harasser. *The court set forth a rule that a policy prohibiting harassment that includes no assurance that a harassing supervisor can be bypassed in the complaint process is unreasonable and cannot protect an employer from liability.*

Finally, the appeals court determined that when Merriweather's mother complained to the shift supervisor, she was acting as Merriweather's agent and, therefore, her opposition to the discrimination could be attributed to Merriweather for purposes of finding that Merriweather was fired in retaliation for opposing the unlawful discrimination. The court recognized that people often act through agents, such as lawyers, and that minors in particular *must* act through agents, such as their parents, in any legal matter. Accordingly, the fact that the employee's agent, and not the employee herself, complains of unlawful discrimination is sufficient to support the filing of a claim of retaliation against the employee.

The decision in this case should serve as a reminder to all school district and municipalities and, in particular, those that employ young persons, of the need for a clear and easily understandable procedure by which teenage employees may complain of harassment. Of course, merely adopting such a procedure will not always protect an employer from liability for harassment, and an employer's best action is to continue to take affirmative steps to eliminate harassment in the workplace.

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