



RIGHTS STUFF

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Sexual Harassment At Fast Food Restaurants

Fast food restaurants sometimes seem to be a breeding ground for sexual harassment complaints. The combination of young managers and even younger and often inexperienced employees, along with the lack of effectively publicized sexual harassment policies, sometimes can be conducive to hostile environments and lead to litigation. A recent case from the Seventh Circuit illustrates the point well.

Samekiea Merriweather, who had just turned 16, began working for a Burger King in Milwaukee. This was her first paying job. The manager was a 35-year-old man named Tony Wilkins. Wilkins had sexual relations with several of his female employees and apparently wanted to continue his established practice with Merriweather. He made suggestive comments to her, rubbed against her and tried to kiss her. She rebuffed him, but he continued. He told her he wanted a "young girl" because their bodies were not yet "all used up." He told her he wanted to take her to a hotel, where he would give her anything she wanted and pay her \$500 or \$600. She told him she had a boyfriend. His reply was that he was tired of doing things for her. He wasn't going to do anything else for her because she was giving her body away for free when he was trying to pay her. He turned hostile and fired her, allegedly for missing a shift. But he had changed her schedule without telling her. Later, he rehired her and then continued to harass her.

Merriweather complained to her shift supervisors and to the assistant man-

ager, to no avail. She asked the assistant manager if they had a phone number she could use to complain about the harassment. He said he didn't know if he could give out the number. Eventually he gave her a number, but it was not the correct number to use to report harassment. When she told him that, he said, "Well, I don't know then."

Merriweather's mother came to the restaurant and complained to a shift supervisor named McBride about how Wilkins was treating her daughter. McBride told Wilkins, who fired Merriweather on the grounds that she had involved her mother in the matter rather than handling it "like a lady." Merriweather sued.

Surprisingly, given the facts outlined above, the Trial Court found for Burger King. The Trial Court said that Merriweather had failed to invoke the company's procedure for complaining about harassment. It said she had not been retaliated against for opposing discrimination because her mother had been the one who opposed the discrimination.

The Court of Appeals disagreed. The Court said that Burger King needed to have a complaint policy that was understandable to its employees, including young teenagers working for the first time. Its complaint policy was far from a model of clarity. The handbook policy said that complaints

(Continued on page 2)

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Courts And Interpreters

Jesus Arrieta was arrested in June of 2005 and charged with dealing in cocaine. At his preliminary court appearance, he told the Court that he didn't speak English. As is typically done, the Court ordered that an interpreter be present at its initial hearing.

A few days later, Arrieta posted a \$50,000 bond and hired a private attorney. Both his private attorney and an interpreter were present at his initial hearing. The Trial Court informed the attorney that Arrieta would have to pay interpreters at future hearings. He objected to doing so. The Court told him that it paid for interpreters beyond the initial hearing only if the defendant demonstrates that he is indigent.

Arrieta filed a motion to require the court to provide translator services, which was denied. He appealed, unsuccessfully.

The Indiana Supreme Court noted that "as the number of Indiana residents who do not speak English continues to rise, we must ensure these individuals can maneuver the system of justice. Encountering the court system is difficult enough for native English speakers. Non-English speakers struggle merely to understand the words of court staff, lawyers, and judges. Let alone the corresponding processes they reflect. When court arrangements to meet this need go badly, the consequences can be very adverse."

The Court said that it did not dispute that "an indigent, non-English-speaking criminal defendant is entitled to interpreting at public expense." But the question in this case was whether a solvent criminal defendant is entitled to a court-financed interpreter. Because Arrieta had not shown he was indigent, despite ample opportunity to do so, the Court said he had to pay for a defense interpreter to translate the English proceedings for him. But the Trial Court was required to provide a court-funded interpreter to translate any non-English testimony for the benefit of everyone else in the courtroom. The case is Arrieta v. State of Indiana, 878 N.E.2d 1238 (Ind. 2008). ♦

Fast Food Restaurants (continued from page 1)

should be made to the "district manager." But it didn't say who this person was or how to reach him. The list of corporate officers and managers in the handbook did not list a "district manager." The handbook had a phone number, but if you called it, you reached a receptionist. You might not know whom to ask for because you don't know who your district manager was or even which district your restaurant was part of.

The policy had no bypass procedure, a way to keep employees from having to report harassment to the supervisor allegedly doing the harassing. Shift supervisors who receive complaints about harassment were supposed to forward the complaint to the general manager. In this case, the general manager was Wilkins. Wilkins at that point was

supposed to turn himself in, which is unlikely. As the Court said, "A policy against harassment that includes no assurance that a harassing supervisor can be bypassed in the complaint process is unreasonable as a matter of law."

Burger King's paychecks included a "hotline" telephone number that was not the same number as was listed in the handbook. The pay statement said employees should call the number if they want to "comment." It doesn't say it's the number to use to report harassment. The number appeared in an inconspicuous place on the pay statement.

The Court said that it would not be unduly costly for the owner of this Burger King, which lists itself as "one of the largest restaurant franchise companies in the coun-

try" on its web page, to implement a more effective harassment policy. It could post a notice in the employee area giving employees a number to call to report harassment. The number could ring in the human relations office. The Court said that when Wilkins retaliated against Merriweather because her mother complained, it was a form of retaliation. The mother was acting as Merriweather's agent. Merriweather herself, as a teenager, could not bring a formal legal action against the company. The mother, who was not an attorney, had no duty to find out exactly how to file an internal harassment complaint when the company's policy was so unclear.

The case is EEOC v. V&J Foods, Inc., 507 F.3d 575 (7th Cir. 2007.)



Reassignment As A Reasonable Accommodation

Let's say you have an employee who can no longer do her job because of a disability. You have another job available that she is qualified to do, but you also have applicants for that opening who are more qualified than she is. Do you have to transfer her to the new job as a reasonable accommodation? Courts have split on this question. Until recently, it looked like the Supreme Court was going to give a definitive answer, but for now, it will not be doing so.

Pam Huber worked for Wal-Mart as a dry grocery order filler, earning \$13 an hour. She permanently injured her right arm and hand and could no longer do that job. She sought reassignment to a vacant router job, an equivalent position that she was qualified to do, as a reasonable accommodation for her disability. Wal-Mart required Huber to apply for the router job and

compete for it along with other applicants and ended up hiring someone the store felt was better qualified. The store later gave Huber a job as a janitor at another store, where she earned \$6.20 an hour. She sued and won at the District Court level. Wal-Mart appealed. The Eighth Circuit Court of Appeals said that an employee with a disability was not automatically entitled to reassignment to a vacant position as a reasonable accommodation because Wal-Mart had a policy of filling vacancies with the most qualified candidate. Huber appealed to the U.S. Supreme Court, which agreed to hear the case. But then the parties settled and the Supreme Court cancelled oral arguments.

The Tenth Circuit had said in a previous case that if the ADA required employers to consider employees with disabilities on an equal basis

with all other applicants, then the reassignment language in the ADA "would add nothing to the obligation not to discriminate, and thereby be redundant." The Seventh Circuit had said in another case that reassigning an employee with a disability to a vacant position is mandatory only "if the reassignment is feasible and does not require the employer to turn away a superior applicant." The Seventh Circuit Court said that "the contrary rule would convert a nondiscrimination statute into a mandatory preference statute, a result which would be both inconsistent with the non-discriminatory aims of the ADA and an unreasonable imposition to the employers and co-workers" of employees with disabilities.

The Huber case is Huber v. Wal-Mart Stores, Inc., 486 F.3d 480 (8th Cir. 2007). ♦

Walgreens Opens Distribution Center For Employees With Disabilities

Walgreens has opened a new technologically advanced distribution center in Anderson, SC that has a goal of staffing 30 percent of its workforce with people with disabilities. To date, 44 percent of the employees have a disability. In 2009 the company will open another distribution center in Connecticut that has similar hiring goals. Randy Lewis, Walgreens' senior vice president for logistics and distribution, came up with the idea. Lewis realized that his high-school age son with autism would have few job opportunities and wanted to create jobs that more people with learning and cognitive disabilities could do.

The needs of people with disabilities were taken into account in the design of the center. Flexible work stations adapt to a person's height, elevators serve people who cannot walk up the steps to the workstation platform and touch screen computers with large icons and easy-to-read type deliver only the information needed at the moment. Signs with large symbols and Braille are accessible throughout the building for people who are visually impaired or blind. Processes are streamlined and simple so that people with cognitive disabilities can do the work.

The workflow is also designed to decrease lifting for employees and protects and enhances their safety.

However, the company stressed that the jobs are not just for people with disabilities and that people without disabilities work alongside employees with disabilities.

Employees are trained at a facility in Anderson, which is provided through a partnership between Walgreens and the Disability and Special Needs Board. Here employees are prepared for what the distribution center will be like and learn some of the skills they will need on the job. Walgreens launched a Web site to recruit people with disabilities for the Anderson distribution center, www.walgreensoutreach.com. ♦

(From the ADA Compliance Guide, December, 2007)



BHRC Essay/Art Winners Announced



Mayor Mark Kruzan poses with the winners of the 2008 Essay/Art contest at the awards ceremony on March 24, 2008.

DON'T FORGET TO VOTE MAY 6!!

**City of Bloomington
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The BHRC announced the winners of its 2008 essay/art contest. The first and second place essay-winners at the lower elementary level were both third graders from University. Anna Raphael won first place and Ahmad S. Rahman won second place. The first place winner at the upper elementary level was Corey Dadds from Harmony. The middle school essay winners were eighth graders from Batchelor. Miranda Schumes won first place and Jordan Kern won second place.

In the lower elementary art division, Hyun Ki Lee, a third grader from University, won first place. Marina Blackwell, grade 3, from Childs won second place and Doh Youn Kim, grade 3, from University won third place. At the upper elementary level, Adam Diersing and Stella Winterman, grade 4, from Templeton won first place. Kaiya Grundmann, grade 4, and Olivia Dagley, grade 6, from Templeton won second place. Congratulations to all of these students. ♦