

# EMPLOYMENT LAW

## A L E R T

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### *Nashville Case Highlights Need for Carefully Drafted Sexual Harassment Policy and Training*

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A recent decision from the federal court in Nashville highlights the importance of a carefully drafted sexual harassment policy and of the need to train employees about the proper complaint process. The main issue concerned when an employer is considered to be “on notice” of a complaint of harassment. A “shift leader” had received the complaint but took no action. Later, when the manager heard the complaint, the action was swift and effective. Was the report to the “shift leader” sufficient to put the company on notice such that his delay could lead to liability for the company? District Judge Aleta Trauger ruled yes, a report to the shift leader was at least sufficient to require a jury trial on the question.

Mrs. Winner’s Chicken and Biscuits Corporation was sued for sexual harassment. The evidence showed that an investigation was initiated almost immediately and discipline administered less than 24 hours after the restaurant manager learned of the coworker’s alleged harassment of the female plaintiff. The plaintiff had complained to a shift leader two weeks earlier, and the shift leader had not reported the complaint to the store manager and had not taken any action against the alleged harasser.

The company’s sexual harassment policy appeared to say all the right things. The policy required complaints to be reported to the “Area Supervisor, Director of Operations, Vice President/Director of Human Resources, [or]... the Silent Witness Number,” and it required “management employees” to report complaints of sexual harassment to their supervisor or the human resources department. While the company explained that shift leaders are not managers, several managers testified that the shift leader should have reported the complaint up the chain of command. One manager even testified that the shift leader could have disciplined the employee on the spot, including sending an employee home if warranted.

According to Judge Trauger, this evidence sounds like a shift leader did have management authority, and that the evidence at least was sufficient to raise a jury question about whether notice to the shift leader was notice to the company.

This case highlights the importance of thoughtfully crafting a harassment policy and understanding how employees might perceive the roles of particular groups in dealing with harassment complaints. This case also highlights the need for training management as well as non-supervisory employees regarding those roles. A company has the discretion to decide the persons to whom complaints should be made, but it should reinforce that all persons with real (or in this case, perceived) authority have some responsibility to report a complaint. This case also highlights a “rock and hard place” dilemma. An employer wants to ensure integrity to its complaint process – i.e., that when a complaint is made, it is taken seriously and promptly reported to the right persons. However, painting with too broad a brush could also harm the employer. The company’s practice under its policy should have more accurately reflected the reality that shift leaders had some management authority (as the managers appeared to testify), or the company’s policy should have more clearly noted that shift leaders were not managers and were not included among those employees to whom reports of harassment should be made. This case underscores the careful attention that employers must give to whether they intend generally for shift leaders – and persons in similar positions – to be considered as supervisors, and to provide clear policies and training regarding that issue.

If you have any questions about this alert, please call one of our labor attorneys listed below.

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