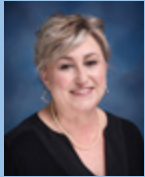




Sonic Safety Matters

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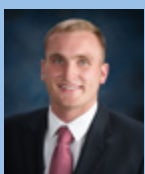
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PREVENTING SEXUAL HARASSMENT IN THE #METOO ERA

With the #Metoo movement in full swing and sexual harassment dominating the news and social media, employee awareness of sexual harassment is at an all-time high. At the same time, the EEOC is on the verge of publishing its first update to its sexual harassment guidelines in over 20 years, likely to draw even more attention to the issue. As such, now is the time to take the following proactive steps to stay out of the news and the court house. But has anything really changed or should employers do anything differently?

ASSESS THE WORKPLACE

Restaurants are on the frontlines of this movement. According to a recent EEOC Task Force Report, chain restaurants, due to their decentralized workplaces, are more at risk for sexual harassment. Other sexual harassment risk factors identified by the EEOC's Task Force included workplaces with younger workers, cultural and language differences in the workplace, and workplaces that rely upon customer service. Each of these factors is equally applicable to restaurants. Understanding these factors and recognizing them in your workplace can provide restaurants with a roadmap to take proactive actions to ensure that harassment will not happen in your workplace. Employers should assess their workplaces for these risk factors and explore ideas for minimizing those risks.

For example, if you have a lot of young employees that may not understand what sexual harassment is or appreciate the potential effects of sexual harassment, you may want to provide orientation to all new employees or sexual harassment compliance training with emphasis on what constitutes sexual harassment. This is especially true for minors. Additionally, restaurants can be liable for the sexual harassment of its employees by its customers. At the same time, customer satisfaction is very important to restaurants. In light of this scenario, restaurants should advise employees that the sexual harassment policy prohibits unwelcome sexual harassment by customers and that employee's should report any such conduct, despite any "the customer is always right" mentality.





MAINTAIN AN EFFECTIVE SEXUAL HARASSMENT POLICY

To be effective, a sexual harassment policy must be comprehensive, provide a clear and easy to understand description of what conduct is prohibited, be bilingual where appropriate, and offer reporting procedures that are multi-faceted, offering a range of methods, multiple points-of-contact, and geographic and organizational diversity where possible, for an employee to report harassment. Moreover, the sexual harassment policy should address any applicable risk factors and incorporate any solutions identified to minimize those risks.



CONDUCT COMPLIANCE TRAINING

Having a written sexual harassment policy is a good start, but it is not sufficient on its own to prevent sexual harassment or insulate your business from liability. Compliance training for all employees is a valuable tool to educate employees about what forms of conduct are not acceptable in the workplace, the different avenues available to them to bring forth any concerns. This training should be live, interactive, and focus on issues affecting restaurant employees. Additionally, managers and supervisors are the heart of an employer's prevention system and should receive additional training on how to address conduct before it rises to the level of illegal harassment.

PROMPTLY RESPOND TO AND INVESTIGATE COMPLAINTS

If you receive a complaint of sexual harassment, you must take the complaint seriously and take action. Under the law, an employer's notice of sexual harassment occurring or receipt of a complaint could constitute legal notice to the employer. This means that if the company does not take corrective action in response to a complaint, the company cannot later deny that it was aware of the harassment. **As such, it is important for all supervisory and managerial employees to take complaints seriously, know what constitutes sexual harassment, and to timely address such issues.**

Further, an employer can fully investigate an allegation of sexual harassment, take reasonable and appropriate corrective action, and still find itself facing a lawsuit. This often happens when employers do not complete their investigations timely or fail to communicate its activities with the reporting employee, leaving the employee left feeling ignored. Additionally, documentation during investigations is key. If it is not in writing, it did not happen. Therefore, investigators should document all steps taken, obtain written statements from witnesses and the complaining employees, the determination that was made, and any remedial action imposed.

While the forthcoming EEOC sexual harassment guidance is expected to address most of these issues, taking these proactive steps now will best ensure a harassment free work environment and avoid costly lawsuits in 2018.



HAS ANYTHING REALLY CHANGED AND SHOULD EMPLOYERS DO ANYTHING DIFFERENTLY?

Not really. Awareness of these types of issues is certainly at its peak (so employers should expect more reports of harassment – some legitimate and some not), but in reality employers should stick to the basics when responding: **Train employees on the Company’s policies, make sure there are several avenues of reporting paths for reports of harassment, and take prompt remedial action when warranted. And carefully document your progress along the way. Harassment claims come in all sizes and shapes and no one response fits all situations.**



WHAT ELSE SHOULD BE DONE?

Consider speaking with IMA about Employment Practices Liability Insurance. Beyond the obvious benefit of shifting some of the financial liability of sexual harassment claims, you can also gain access to IMA’s risk management team, which includes access to outside counsel who specialize in preventing and defending harassment claims. Counsel can carefully guide you through an investigation and anything that follows. Keep in mind that most claims can be minimized if promptly investigated and resolved.

INTRODUCING THE BRAND NEW



This SONIC Franchise Model Employee Handbook was developed through the dedicated efforts of members of the SONIC Franchise community including the Franchise Advisory Council (FAC) Great People Task Group with assistance from attorneys Craig Annunziata and Steve Miller of Fisher & Phillips LLP. For over 20 years, Craig and Steve have worked closely with IMA and its clients including the SONIC Franchisees who participate in IMA’s Sonic Insurance Program.

If you choose to use this SONIC Franchise Model Employee Handbook, you must understand and consider the following prior to distribution to employees:

- 1. The Handbook must be adapted to the operations and policies of the particular franchisee*
- 2. State and local laws may vary and, when applicable, should be incorporated into the Handbook*
- 3. Consult with employment counsel prior to distribution*

DOWNLOAD HANDBOOK »



About the authors: Craig Annunziata and Steve Miller are attorneys with the law firm of Fisher & Phillips. Craig and Steve do nothing but represent employers in employment and labor disputes. Craig and Steve are privileged to have partnered with IMA for over 20 years in helping IMA’s client avoid claims in the employment arena.