

EEOC Fights to Keep #MeToo Movement Alive

Related Professionals

Ashley Parr
864.282.1138
aparr@nexsenpruet.com

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The Equal Employment Opportunity Commission (EEOC) sometimes chooses to file a lawsuit against an employer, on an employee's behalf, after investigation of a charge of discrimination. Typically, the EEOC chooses to litigate only a very small percentage of all charges filed. In this past June alone, however, the commission filed *eight* lawsuits alleging sexual harassment against employers, thus perpetuating the #MeToo movement.

The EEOC's Select Task Force on Harassment

Perhaps the barrage of sexual harassment lawsuits should come as no surprise. On June 11, 2018, only days before marching into federal courts around the country to file the eight lawsuits, the EEOC's Select Task Force on the Study of Harassment in the Workplace held a meeting entitled "Transforming #MeToo into Harassment-Free Workplaces." The meeting delved into workplace harassment in light of the #MeToo movement, and discussed how employers can and have worked to better prevent and stop harassment. According to Commissioner Chai R. Feldblum, the EEOC's "challenge is to use the #MeToo movement well," indicating that the commission would take advantage of the "attention and commitment" of a range of actors it currently has, and "channel that energy to create significant and sustainable change."

The Lawsuits

As for the lawsuits, all but one involved allegations of "traditional" male-on-female sexual harassment, similar to the harassment alleged by numerous women in the #MeToo movement. Notably, three of the eight lawsuits involved the use of staffing agencies, independent contractors or a franchise model. This could signify that joint employment is another hot topic for the EEOC, and remind companies to take sexual harassment allegations seriously, even where the company denies joint employment.

The factual allegations of the lawsuits are summarized below:

- *EEOC v. Sierra Creative Systems Inc.*, No. 2:18-cv-05185 (C.D. Cal.) (Filed June 12, 2018). The EEOC alleges that a printing and mailing company allegedly failed to prevent sexual harassment by a supervisor toward female employees at multiple locations. In the alleged harassment, the supervisor brushed up against women with his private parts, grazed their breasts and used derogatory words such as “whores” and “cows” to refer to them.

- *EEOC v. Total Maintenance Solutions, Inc.*, No. 1:18-cv-00413 (S.D. Ohio) (Filed June 13, 2018). The EEOC alleges that the owner of a commercial cleaning company sexually harassed his office manager, including through unwanted touching, sexual comments and repeated phone calls to her at night, after work hours, in which he suggested a sexual relationship.

- *EEOC v. G2 Corporation*, No. 3:18-cv-01524 (N.D. Tex.) (Filed June 13, 2018). The EEOC alleges that a screen door maker subjected a female warehouse employee to harassment by her production manager and the company’s vice president. The complaint alleges that the production manager followed the employee into a restroom, groped her and attempted to physically force himself on her. It also alleges that the vice president made graphic sexual comments toward the employee, including asking her for sexual favors.

- *EEOC v. Georgina’s, LLC*, No. 1:18-cv-00668 (W.D. Mich.) (Filed June 15, 2018). The EEOC alleges that an Asian and Latin “fusion cuisine” restaurant subjected female employees to repeated sexual harassment by the establishment’s owner. The complaint alleges that the owner made lewd sexual comments to a female sous chef, and subjected other female employees to inappropriate touching of their buttocks, leg, chest and crotch areas; kissed them without consent; and forced them to sit on his lap. In filing the lawsuit, the EEOC’s regional attorney for the Indianapolis District Office stated that “[o]wning a restaurant does not give one special license to sexually harass female employees,” emphasizing that the “EEOC will continue to stand up to such behavior wherever it occurs – even in the small kitchens of quiet lakeside cities like Traverse City.”

- *EEOC v. Tapioca Express, Inc.*, No. 3:18-cv-01217 (S.D. Cal.) (Filed June 11, 2018). The EEOC alleges that the owner of two milk tea franchises sexually harassed two female employees by brushing up next to them and making other unwelcome physical contact. The complaint names the corporate franchisor as a defendant based on the allegation that the franchisor had the “ability to prevent and correct the harassment” because it had received and responded to a previous employee’s harassment charges against the same franchise owner.

- *EEOC v. Real Time Staffing Services, Inc.*, No. 1:18-cv-00541 (D. N. Mex.) (Filed June 13, 2018). The EEOC alleges that a staffing company failed to prevent the alleged sexual harassment of a group of female employees the firm had placed at the Albuquerque Police Department’s Inspection of Public Records Act Unit. Although the women

repeatedly complained about the alleged misconduct, the company failed to take timely action to prevent or remedy it.

- *EEOC v. New Prime, Inc.*, No. 6:18-cv-03177 (W.D. Mo.) (Filed June 13, 2018). The EEOC alleges that a trucking company created a hostile work environment by allowing one of its drivers to continue riding with female drivers, even though the company knew the driver had sexually harassed others before. The company had suspended this driver, but continued to pay him as an independent contractor – a change that did not preclude the lawsuit against the trucking company.

- *EEOC v. Master Marine, Inc.*, No. 1:18-cv-00269 (S.D. Ala.) (Filed June 13, 2018). The EEOC alleges that a shipbuilder took no action when one of its white male employees sexually and racially harassed an Asian male colleague. This case involves the sort of “intersectional harassment” that the EEOC’s Select Task Force on Harassment singled out as a goal in its June 2016 report. In that report, the task force observed that there “is increasing evidence that targets of harassment often experience mistreatment in multiple forms, such as because of one’s race and gender, or ethnicity and religion.”

The Takeaway

The lawsuits serve as a warning to employers: the EEOC is stepping up its aggressive pursuit of sexual harassment cases in court. While it is impossible to predict the commission’s next target, employers can always adopt proactive measures that may prevent sexual harassment from occurring in the first place. Employers can also minimize their exposure to claims of sexual harassment by implementing a comprehensive and effective harassment policy; establishing trusted and accessible complaint procedures; and conducting regular, interactive sexual harassment training. Further, upon receiving a report of potential harassment, employers should promptly initiate an impartial and thorough investigation, followed up by appropriate action as needed.

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