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Federal Court Holds that Employer Complaint Policy Is Unreasonable

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Federal law provides that an employer may attempt to avoid liability for a discrimination actions in certain situations if it has a policy in place which reasonably informs the employee whom to complain to regarding a complaint of discrimination or harassment. If the employee fails to complain as directed by the policy in some situations the employer may then raise a defense to the discrimination action. Recently, a the Seventh Circuit Federal Court held that an employer could not avoid liability where the supervisor committed the harassment and its discrimination complaint procedure was confusing and unreasonable. In that case, a 16-year-old high school student employed at a fast food restaurant made repeated complaints to her shift supervisors and the assistant manager due to the restaurant manager's actions of making suggestive comments and physical actions of rubbing against her and trying to kiss her. When the teenager's mother came to the restaurant to complain, the employee was terminated by the harassing supervisor. The employer tried to defend the case by arguing in part that the employee failed to comply with the company policy as she failed to direct her complaints of harassment to the proper person. The court rejected the argument and in addition to holding the employer strictly liable because the harasser was her supervisor, the court also held that the complaint procedure was unreasonable. The court explained that what is reasonable depends on the capabilities of the class of employees in question. While the employer does not need to create its procedures to the competence of each individual employee, since the employer knew that it employed many teenagers, the company was obligated to create procedures to the understanding of the average teenager. Because the policy did not clearly identify to whom complaints should be raised, the court found that the complaint procedures in this case were intentionally confusing. As such, employers should be careful in drafting policies that clearly advise employees where to complain in the situation of harassment or discrimination especially considering the composition of its workforce. For further information, please visit our web site at www.joettedoran.com.

**This article is not intended as legal advice. You should consult with an attorney for individual advice regarding your own situation.*

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