



**Those “Two Yutes” May Be Your Next Claimants –
The EEOC’s New Youth Initiative**

By Larry Stuart

It didn’t seem inappropriate at the time. I was a 17 year old swing manager at the local McDonald’s, supervising other teenagers and some older employees. Like any teenage boy, I flirted with the girls working at my franchise, played practical jokes on the other boys, and even went to the prom with one of my “subordinates.” It seemed perfectly normal at the time.

Now, after defending companies in employment disputes for almost ten years, I look back and marvel at how much things have changed, and how much they haven’t. I don’t remember receiving any training about harassment or discrimination, even after I turned 18 and began running the restaurant at night on my own. I remember being very uncomfortable the first time I had to discipline an employee, and again the first time I had to fire someone, never having received any real training on how to do either. It turns out I was not alone.

Recent high profile lawsuits involving retail establishments and restaurants highlight the reality that many employers and their supervisors are still poorly prepared to prevent and remedy improper workplace conduct, particularly conduct involving younger workers, a group that by definition lacks the experience and judgment that comes with age.

A Burger King franchisee in St. Louis recently settled a sexual harassment lawsuit involving seven teenage workers for \$400,000. The young women alleged their restaurant’s manager subjected them to groping, vulgar sexual comments, and demands for sex. The teens complained to assistant managers, who were apparently powerless to remedy or stop the conduct. Under the settlement, the company must conduct extensive sexual harassment training, distribute a revised sexual harassment policy to all employees, and post a toll-free hotline number in all of its restaurant locations.

In another case, the Equal Employment Opportunity Commission (EEOC) brought suit on behalf of a young female store clerk who alleged a co-worker and a supervisor teased and taunted her with sexual comments and encouraged store customers to hit on her. She quit the job after the



harasser put his hands around her neck and asked her “What would your boyfriend do if I snapped your neck right now?” Stupid hijinks, or unlawful harassment? The store settled the case for \$111,250 and is no longer in business.

I have witnessed the EEOC’s commitment to these issues first-hand. The EEOC’s Houston office recently issued a finding of discrimination against a Houston-based restaurant based on a single incident involving alleged racially-motivated name-calling by a young African-American supervisor toward an hourly Hispanic employee. Although the company had taken steps to prevent harassment and denied it violated the law, the case settled after the EEOC made its litigation intentions clear.

Recognizing what it believes is a growing national trend, the EEOC recently announced a formal outreach effort targeted at the more than three million workers between the ages of 15 and 17 and the millions more workers who are of college age. Called “Youth@Work,” the EEOC’s new initiative aims to educate young workers about their rights and encourage them to assert those rights against employers that fail to properly protect them. The initiative is based on studies showing young workers generally don’t know or assert their rights. The EEOC has set up a special website, www.youth.eeoc.gov, and will conduct outreach events around the country. In addition, the agency will partner with trade groups, like the National Restaurant Association, to develop more effective outreach and education.

The EEOC’s Youth@Work initiative highlights a number of issues applicable to employers in all industries, whether or not they employ young workers. First, employers must recognize that the way employees talk to each other in school, on the “street” or at home may not be acceptable in the workplace. As popular culture increasingly influences how we speak and act toward each other, the potential for it to conflict with (or change) workplace norms will increase. For many employees, the line between acceptable language, humor or interpersonal interaction and unacceptable workplace conduct is not always clear.

The EEOC initiative is also a reminder that young workers, like many older workers, are often uncomfortable reporting offensive conduct, opting instead to leave issues unresolved. The EEOC believes this problem is particularly acute among younger workers, who are often uncomfortable



challenging the conduct of adults, and companies must continue to actively encourage open communication between workers and members of management.

The EEOC's recent efforts reflect the importance of actively educating employees about acceptable workplace conduct. Employers protect themselves in two important ways when they educate their employees about appropriate workplace conduct: education can prevent inappropriate conduct from occurring in the first instance, which is the ultimate goal, and providing education can insulate companies from liability for co-worker harassment when it actually occurs.

In cases where no tangible employment action has been taken (i.e. no demotion, termination, adverse transfer, etc.), a company may be free from liability if it takes reasonable steps to prevent and remedy unlawful discrimination and harassment and the complaining employee fails to take advantage of remedial measures. At a bare minimum, every company should consider maintaining and distributing a written no-harassment policy that contains the following:

- A statement reflecting the company's commitment to provide a workplace free of unlawful discrimination, harassment or retaliation;
- A statement that any employee who engages in unlawful discrimination or harassment will be disciplined and/or discharged;
- A reporting procedure employees should use to make good faith reports of alleged unlawful discrimination or harassment, including the ability to go "up the chain" if they are uncomfortable reporting the conduct to their immediate supervisor or HR;
- Assurance that employees will not be subjected to, and will be protected from, retaliation if they report alleged discrimination or harassment in good faith; and
- Assurance that investigation of any complaints will be kept confidential to the extent reasonable under the circumstances.

Companies should consider distributing their no-harassment policies on at least an annual basis and obtaining written or electronic acknowledgment from each employee that he or she understands, agrees to, and will abide by the employer's policy, including the Company's reporting procedure.



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JANUARY 2005

The EEOC's Youth@Work initiative also highlights the importance of training company supervisors of all ages regarding their role in preventing discrimination or harassment, the steps they should take if an employee complains about the conduct of a co-worker or other supervisor, and the ways in which a supervisor's own conduct may create liability for their company. A supervisor's failure to investigate and remedy, as appropriate, a complaint of discrimination or harassment, either directly or with assistance from other members of management, can turn an otherwise remediable employee complaint into a legal claim.

If a supervisor personally engages in unlawful discrimination or harassment that results in a tangible employment action, the company may be held strictly liable for the unlawful conduct – meaning it can be held legally and financially responsible even if no other member of management knew about or had an opportunity to correct the unlawful conduct. This is not something most supervisors (younger or older) generally understand.

Whether or not your company employs young workers, the EEOC's Youth@Work initiative serves as a reminder about the importance of maintaining written policies prohibiting discrimination and harassment, the need for companies to educate supervisors and non-supervisory employees about inappropriate workplace conduct, and the benefits of educating supervisory employees about how their own conduct can create liability. By taking appropriate steps, your company can prevent claims and avoid investigation and litigation by the EEOC.

If you have any questions about this topic, please contact either of the following Legge Farrow partners, both of whom are Board Certified in Labor and Employment Law by the Texas Board of Legal Specialization:

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