SEXUAL HARASSMENT: A FOCUS ON YOUTH EMPLOYMENT AND MANAGERIAL PRACTICE IN THE HOSPITALITY AND SERVICE INDUSTRIES

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While the topic of sexual harassment has received considerable attention in both academic and practitioner circles, relatively less attention has been focused on the unique circumstances of the youth worker and the companies that employ them. This article presents a discussion on the importance of addressing underage harassment and explores several facets of sexual harassment that are unique to youth employees. The article explores the differences in employer liability when harassment involves underage workers, and suggests a set of normative measures to address the problems of underage harassment.

KEYWORDS: *Sexual Harassment, Underage Workers, Managerial Practices, Youth Employment*

While the topic of sexual harassment has received considerable attention in both academic and practitioner circles, relatively less attention has been focused on the unique circumstances of the youth worker and the companies that employ them. This is not surprising because while the origins of sexual harassment law and employer liability in general dates from the mid-1970s, much of the legal environment addressing the specific circumstances of teen workers has evolved within the last decade. Recent court decisions suggest a very important lesson for employers: in terms of

sexual harassment one size does not fit all. Youth workers cannot be treated the same as adult employees in terms of sexual harassment policies and practices, and employer liability for sexually harassed underage employees is more extensive than for adult workers.

This article explores a number of issues related to sexual harassment and the underage worker. We document the prevalence of underage harassment and identify industries where the problem is particularly of concern. We then discuss the importance of addressing underage harassment and explore several facets of sexual harassment that are unique to youth employees. Finally, we explore the differences in employer liability when harassment involves underage workers, and suggest a set of normative measures to address the problems of underage harassment.

Sexual Harassment and the Underage Worker: The Extent of the Problem

The true extent of the sexual harassment problem among underage workers is difficult to determine but most scholars agree on two conclusions: (1) the problem is substantial and understated in official statistics (EEOC Reports, 2013), and (2) the problem is growing (EEOC, Reports, 2013). Sexual harassment charges filed with the EEOC and state and local Fair Employment Practices (FEP) agencies have actually declined from 15,000-16,000 cases per year in the mid to late 1990s to fewer than 12,000 cases per year in 2010 and 2011 (EEOC Reports, 2013). At the same time the proportion of complaints from underage workers between the ages of 14 and 17 increased from under two percent in 2001 to eight percent in 2004 (Bible, 2008). Tahmincioglu (2010) has classified sexual harassment as epidemic in places where young people are most likely to work. Although the number of underage sexual harassment charges has increased in recent years, Tahmincioglu (2010) maintains that the number of actual charges represents the tip of the iceberg because the great majority of teen victims are unlikely to come forward. Hinojosa (2009) suggests

that about 200,000 teenagers are being sexually assaulted or harassed at work every year.

In a joint investigation by the Public Broadcasting System (PBS) and the Schuster Institute of Investigative Journalism at Brandeis University, senior researcher E. J. Graff suggested that while parents worry about sexual predators on the Internet, teens are more likely to encounter a sexual predator at work. The author stated that we do not know how prevalent teen harassment really is, but a 2005 study from the University of Southern Maine found that 46 percent of teenage girls who worked had been sexually harassed, and that the younger the worker the more likely that harassment will occur. Graff also maintains that as a result of recent increases in youth harassment the EEOC recently began the *Youth at Work* initiative to educate teens and employers on youth harassment reporting increases in (Graff, 2009).

Other studies report similar results. Spolter (2007) states that the results of a recent University of Florida study report that 35 percent of high school students holding jobs have been sexually harassed at work, one-third of whom were young males. Overall the study revealed that 19 percent of all employed teenagers have been sexually harassed by supervisors or managers and that coworkers of similar ages were responsible for 61 percent of the sexual harassment teens experienced (Spolter, 2007).

Where Are the Young Workers Employed and Where Does Underage Sexual Harassment Occur?

One study by the University of Florida study notes that the potential magnitude of the underage sexual harassment problem becomes clear when one considers that the U.S. has among the highest teen employment rates of all industrialized nations with nearly 70% of teens 16 and 17 years

of age in the United States holding jobs (Spolter, 2007). Moskowitz notes that there were approximately 7,273,000 youths ages 16 to 19 working in 2007 with an estimated six million under age 18. He reports labor force participation rates for this group at 75 percent of males and 62 percent for females (Moskowitz, 2010). The U. S. Bureau of Labor Statistics (2011) reports that in the Summer of 2011, 18.6 million people between ages 16 to 24 were employed with 26 percent in leisure and hospitality and 21 percent in retail trade. The U. S. Department of Labor completed a detailed profile of youth employment and found that 57 percent of 14 year olds and 64 percent of those age 15 reported having some type of job. Of those 15 year olds who had a job, slightly less than half of males and more than half of females were employed in food and beverage industries (U.S. D.O.L., 2000). More than one-half of adolescent workers are employed in the retail sector. Restaurants, quick service restaurant (QSR) outlets, grocery stores and other retailers account for 50% of all working 15-17 year olds. Half of those remaining are employed in the service sector, such as health-care settings (Moskowitz, 2000).

Sexual Harassment Cases in the Food and Beverage Industry

As these various statistics suggest, many young people do work and of those a great many work in food and beverage settings. Moreover, it appears that the younger the worker the more likely he or she is to be employed in food and beverage relative to other industries. So it is not surprising that an article published in *Nation's Restaurant News,* a leading hospitality trade journal, noted that 72 of 127 EEOC complaints involving teens dating back to 1999 were against restaurants, that all but 11 involved sexual harassment charges, and that it cost those companies more than $7.3 million to settle (Chanen, 2008).

While sexual harassment among underage workers is likely to occur in the food and beverage industry because of sheer numbers, many attribute much of the problem to unique aspects of the industry's operation and culture. Teen workers may fall through the cracks because they usually work on a part-time, temporary, or seasonal basis, and employers tend to neglect issues affecting them relative to full-time employees (Chanen, 2008; Greenwald, 2006). In addition, supervisors in this industry also tend to be younger, low-paid, poorly trained (Graff, 2009). Many restaurants attempt to create a festive atmosphere that encourages informality and fun as part of a strategic plan (Bible, 2008). An inadvertent side effect of this may be the creation of a sexually-charged atmosphere. Underage workers often lack the maturity to distinguish the workplace from other aspects of life, and do not see socializing and horseplay on the job as necessarily inappropriate (Chanen, 2008). Adolescents lack awareness of many behavioral norms in the workplace that are radically different than those at school, and that is particularly problematical for young managers thrust into a supervisory role (Bible, 2008).

A number of recent and highly visible cases serve to demonstrate the extent of the teen sexual harassment problem in the food and beverage industry, and underscore the magnitude of employer liability. These relatively few cases acted on by the EEOC become public record, and likely understate the extent of underage sexual harassment litigation. In many employment law cases in which the victim's case is filed by a private attorneys on their (or the parents of underage employees) behalf, employers eventually enter into confidential settlement agreements with the plaintiffs and these outcomes are not disclosed (Spolter, 2007). The widely known lawsuits are described here:

McDonald's Franchises

In 2001 and 2008 two McDonald's franchises paid $505,000 to eight teenage women who were subjected to unwanted touching and lewd comments. The EEOC charged that the manager had sexually harassed teens in more than one of the company's restaurants in New Mexico and California (*EEOC v. Colorado Hamburger Co*., 2008).

Bob Evans Restaurant

This Missouri employer paid a $250,000 settlement in a lawsuit brought by eight women claiming sexual harassment, including three teenagers. One of the teens was represented by a private attorney, whose fees were paid for by the employer. The EEOC litigated on behalf of the other women (*EEOC v. Bob Evans Farms, Inc.*, 2005).

Ruby Tuesday

Ruby Tuesday agreed to pay $255,000 to settle a case in which a general manager subjected female employees (some of whom were teens) with crude sexual propositions and explicit and graphic remarks (*EEOC v. Ruby Tuesday, Inc.*, 2009).

Burger King Franchise

$400,000 was paid to seven females, six of whom were high school students, for a supervisor who engaged in groping, making sexual comments and demanding sexual favors. The St. Louis-area employer also violated the law by withholding training on how to internally file complaints of discrimination. After women did file internal complaints, the

employer promoted the harasser to a restaurant manager position (*EEOC v. Midamerica Hotels Corp.*, 2004)

Longhorn Steak Franchise

$200,000 was paid to three females, one a 16 year old in high school enrolled in an on the job training course. An assistant manager working at this Florida restaurant would grab the employees' breasts, inappropriately touch their hips and lower backs and make sexually charged comments (*EEOC v. Rare Hospitality International, Inc.*, 2004).

Other food and beverage companies including Starbucks, Jamba Juice, Taco Bell, Steak ‘n Shake, Subway, and Jack in the Box have dealt with sexual harassment allegations (Bible, 2008; Flahardy, 2005). Aside from food and beverage operations recent underage sexual harassment cases have been settled involving entertainment and hospitality related companies including Carmike Cinemas, Ultra Star Cinemas, and Sea World of Florida (Spolter, 2007).

Although the total number of such suits is low, that number is increasing (Wells, 2005), and it should raise concerns among companies that employ large numbers of teens. The reason: When faced with difficult situations such as harassment, many teens simply quit without reporting incidents, and that leaves employers unaware of a serious management problem that not only exposes the company to substantial legal liability, but that continues to drive away workers and increase recruiting, hiring, and training costs (Wells, 2005).

Vulnerability, Sexual Harassment, and the Cost to Underage Workers

One underlying theme of this article is that not enough is being done to protect teens at work. Teens are particularly vulnerable and they often suffer great harm from harassment. They are vulnerable because of their immaturity and inexperience, the nature of their work, and their lack of attachment to the job. There are many reasons for employers to devote time and energy to underage sexual harassment. Not the least among them is that underage sexual harassment comes with great social cost, and responding to sexual harassment appropriately is socially responsible and represents the ethical course of action by the organization.

One of the reasons that sexual harassment of these teens continues is that underage harassment cases are seldom reported. In general, teenagers are reluctant to come forward and complain about their supervisors' behavior, either because they are embarrassed, afraid, or do not understand what is acceptable in a working environment (Hinojosa, 2009). Because young workers have been taught to respect adults they are often conflicted when subjected to unwelcome or inappropriate behavior and often are reluctant to discuss the problem and it often goes unreported (Drobac, 2007).

The nature of their work context makes underage workers particularly susceptible to sexual harassment because the characteristic informal, casual, and social atmospheres often lack signals to underage workers regarding which behaviors are, or are not, acceptable. Inexperience and poor judgment often prevent teens from being able to differentiate between extra-curricular activities, which often include socializing, gossiping and flirting as permissible activities and after school jobs (Chanen, 2008; Flahardy, 2005). Plaisance (2008) makes the argument that by the time teens reach the workplace most have already been subjected to inappropriate behavior, bullying, and other forms of discrimination and harassment, including that by adults such as teachers. The inevitable

consequence, she argues, is that teens see that adults in power can get away with anything and that teens are powerless to do anything about it.

In addition to being unfamiliar with workplace norms and expectations, underage workers often lack knowledge of the laws designed to protect them, and seldom understand their basic workplace rights (Wells, 2005). Underage workers face a difficult set of issues in that (1) they may not readily distinguish appropriate from inappropriate conduct, (2) that if they recognize conduct as inappropriate they may feel powerless to prevent it or unwilling to report it, or (3) they may not recognize conduct as illegal or lack knowledge of their rights and the processes used to file formal complaints. Compounding the problem is that teen workers are regularly supervised by workers only a few years older than themselves (Wells, 2005). These junior supervisors are inexperienced and may lack basic knowledge of employee rights and responsibilities. They have little training in EEO issues and too often fail to either recognize or report potential harassment. Worse, inexperienced managers may be active participants in the inappropriate behavior. One incident reported to one of the authors was from a young worker who was told during an informal orientation session with a young manager that the workplace was not considered a sexual harassment free zone. The clear meaning was that the culture tolerated or even sanctioned flirting and other sexually-oriented behavior, and employees who had problems with that should seek work elsewhere.

The impact of teenage workers not knowing what sexual harassment is and what they can do about it not only affects the company, but the teens themselves. Loring Spolter (2007), in a Broward County Bar Association article, summarized research findings on teens confronted with sexual harassment and described the big four behavioral symptoms exhibited by teens as isolation,

helplessness, hopelessness, and powerlessness. The author reported that studies from the University of Florida and other sources revealed that teens face psychological trauma from unwanted sex along with risks of pregnancy and sexually transmitted disease. In females the trauma is manifested in increased alcohol consumption, high levels of depression and anxiety, and even symptoms of post-traumatic stress disorder such as flashbacks, nightmares, and sleep disorders. Young male victims of sexual harassment may have similar symptoms to females, but may also respond by displays of anger and violence, poor school performance, criminal activity, and engaging in risky sexual behavior (Spolter, 2007; University of Kentucky, 2013).

Additionally problematical is that increasing access to social media opens teens up to more potential abuse (Gelms, 2010). In some cases young workers have received suggestive text messages late at night by their supervisors. Teenage employees often lack the experience to deal with this type of message, and most of these incidents go unreported unless others raise a harassment charge against the supervisor or the young victims are called to provide testimony (Tahmincioglu, 2010). This is another potential source of liability for employers as courts have broadened the definition of the workplace to include the virtual workplace in response to changing technological and cultural environments such as social media (Gelms, 2010).

Company Liability for Underage Sexual Harassment: The Changing Legal Environment

If the social cost to the nation's youngest workers is not sufficient reason to be proactive then one need only consider the changing legal landscape and recognize that organizations are facing increasing liability for illegal harassment. Recent court decisions have expanded employer liability for underage sexual harassment, and that liability may extend to activities outside the workplace.

There is ample evidence that employers will be increasingly called upon to develop anti-harassment policies that more effectively protect teens as the courts and the EEOC recognize that employer anti-harassment policies suitable for adults may not be sufficient for teens. Employers that fail to deal proactively with underage harassment do so at their peril. Because of the evolution of the legal and regulatory environment over the last decade, employers of young workers cannot afford to be complacent in their policies and practices aimed at younger workers.

In 2006 and 2007 the Seventh Circuit of the U.S. Court of Appeals overturned decisions involving underage workers in two federal district courts that had originally favored the employers. In doing so the court likely expanded the scope of company liability for underage sexual harassment and the nature of employer obligations to protect young workers. We review the implications of these cases below:

Doe v. Oberweis Dairy

In the 2006 case, *Doe v. Oberweis Dairy*, the district court dismissed a lawsuit brought by a 16 year old female employee who worked as a server in an ice cream parlor. The evidence and witness testimony suggested that the girl's 25 year old supervisor frequently groped and grabbed females during work. During her job tenure, the girl had engaged in sexually oriented behavior and, ultimately, in sexual intercourse with the supervisor. The female employee ultimately came to regret the activity and reported the supervisor to police. Since the teen was under the age of consent in Illinois (age 17), the supervisor was arrested on statutory rape charges and prosecuted for his actions. The teen then sued the company under Title VII for sexual harassment. The district court held that the company was not liable for the

sexual harassment for several reasons:

Reason 1: *The teen had not exhausted the administrative remedies available to her before suing.*

The issue of administrative remedies relates to how and when charges must be filed so that state fair employment practice agencies and/or the EEOC can investigate and attempt to resolve complaints before issuing a right to sue letter that allows victims to proceed with a private lawsuit. At issue in this case was that since the victim's attorney refused to allow the EEOC to interview her, the EEOC could not determine the merits of the case. The district court ruled that this lack of cooperation was sufficient to dismiss her case. However, the Seventh Circuit noted that if the EEOC cannot resolve a charge it can dismiss that charge, at which point it must give the victim a right to sue letter and let her proceed with private counsel (Bible, 2008);

Reason 2: *Her relationship with the supervisor was voluntary and the acts were consensual.*

Perhaps the more compelling issue, however, was the argument regarding whether the acts were consensual. The district court ruled that the case lacked merit because the teenage employee voluntarily engaged in flirtatious behavior and had voluntarily consented to the supervisor's desire to have sexual intercourse with her. In a key ruling the Seventh Circuit noted that because of her age the victim could not legally give consent. Essentially the court was saying that sexual behavior of an underage employee is, *per se*, unwelcome, since the state defines it as non-consensual by statute (Plaisance, 2008);

Reason 3: *The supervisor's on-the-job behavior did not meet a standard of severity that was sufficient to be considered harassing*.

For conduct to be harassing and actionable it must meet a severe and pervasive requirement. The district court suggested that since the victim was an active participant in preliminary conduct and that the intercourse had occurred off the job in the supervisor's apartment the behavior was not actionable. The Seventh Circuit said that there was mixed evidence regarding whether the on-the-job conduct was welcome and that was a decision for a jury. Moreover, the appellate court ruled that the off-the-job intercourse arose from the employment relationship and was, thus, actionable (Bible, 2008).

Issue of Employer Liability

In cases of harassment where the harasser is an agent of the employer, the employer has extensive liability unless an affirmative defense can be established. The affirmative defense allows the employer to escape liability if it can show: (1) that the employer exercised reasonable care to prevent harassing conduct, and (2) that the victim failed to used policies and remedies provided by the employer. The extent to which the perpetrator was an agent of the employer was in dispute because he had no authority to fire employees. However, the appellate court suggested that when one is given supervisory authority the liability of the employer is substantial. In this case there were no procedures in place to protect inexperienced workers. Further, where other managers were aware of the perpetrator's behavior and no action was taken to warn parents, the risk of liability is substantial. The level

of employer liability relative to the victim's degree of culpability for her own conduct, should be a question for a jury (Plaisance, 2008).

EEOC v. V & J Foods, Inc.

The 2007 *V & J Foods* case (*EEOC v. V & J Foods, Inc*., 2007) resembled *Oberweis* in many ways. A Milwaukee Burger King restaurant employed a sixteen-year-old female in her first paying job. The 35-year-old general manager of the restaurant was engaged in sexual activity with several other female employees, and began making suggestive comments and advances to the 16-year-old. When the 16-year-old said she was not interested in him, the general manager fired her (ostensibly because she had missed a work shift). She was subsequently rehired but the harassing behavior continued. The victim complained to a shift supervisor and to an assistant manager; no action was taken on her behalf. The victim also asked the assistant manager for a phone number to contact the company to complain directly but she was not given a working number. Eventually when the victim's mother came to the restaurant to complain to a supervisor about the harassment, the mother's action was reported to the general manager who then terminated the victim.

The EEOC brought suit against V & J Foods for sexual harassment and retaliation in violation of Title VII of the Civil Rights Act of 1964. The U.S. District Court for the Eastern District of Wisconsin, using seemingly somewhat questionable logic, granted summary judgment in favor of V & J Foods and dismissed the suit. The district court claimed (1) that the victim had failed to invoke the company's procedure for complaining about sexual harassment, (2) that third-party retaliation (in this case retaliation for the actions of the

victim's mother) was not protected under Title VII's prohibition against retaliation, and (3) the victim had not raised a triable issue regarding whether the reason given by the company for the discharge (i.e., failing to show up for a shift) was indeed a spurious justification for her termination (*EEOC v. V & J Foods, Inc*., 2007).

The Seventh Circuit Court of Appeals unsurprisingly reversed the district court. The appellate court first found that the victim suffered a tangible detriment so the action of the employer's agent (the general manager) resulted in strict liability for the company. Perhaps more importantly the court pointed out that no affirmative defense is possible unless a reasonable mechanism for processing a complaint is in evidence, and it faulted V & J Foods for its inadequate sexual harassment complaint procedures. What is notable about the Seventh Circuit's decision is its conclusion that a one-size-fits-all sexual harassment policy is unsuitable and that the victim's age and level of education (and by extension other contextual variables as well) must be considered in evaluating the adequacy of a policy. While the court conceded that an employer is not required to fit a policy to a specific employee, the implication was that when a company employs a general class of workers (such as young and vulnerable workers) it is under an obligation to develop a policy that the typical employee can understand and use. The V & J Foods policies were facially invalid because it did not identify specific individuals to contact, provided no direct means to contact the official, and did not allow a victim to bypass the harasser (Bible, 2008; Greco, 2008; Page, 2008).

The Seventh Circuit also addressed the issue of third party retaliation. It is clear that if a third party complains about an action and the employee is fired, Title VII's prohibition against retaliation protects only the third party not the victim. However, if the third party is an

agent of the victim (such as the victim's lawyer) then the protection against retaliation extends to the victim. In *V & J Foods*, since the victim was a minor, that minor's parent is the agent of the minor and retaliation against the minor victim is, indeed, a Title VII violation (Bible, 2008).

Addressing Underage Sexual Harassment: Improving Policies and Practices

Establishing an Affirmative Defense

Many of the policies and practices addressing underage sexual harassment are identical to those that employers would use for adult workers. However, there are additional concerns that must be addressed by employers that deal more specifically with underage workers. Valid anti-harassment policies focusing on informing underage workers of their rights and providing adequate reporting measures and penalties for violators, do limit employer liability through the creation of an affirmative defense.

One of the most important lessons coming out of cases such as *Oberweis* and *V & J Foods* is that companies must have both different and better policies for dealing with sexual harassment involving underage workers compared to those for adults. These cases have taught us that liability is more extensive for underage workers and that employers must be more aware of the risks that teen workers face and their relatively more limited ability to deal with those risks. Developing an affirmative defense requires *different* policies in the sense that they reflect both the differences in the legal environment for underage workers and their relative immaturity. Policies need to be better in the sense that policies have to be clearer, more targeted, more effectively communicated, and more consistently reinforced.

However, anti-harassment policies alone are insufficient. Organizational practices need to reflect the changing legal landscape through changes in the way companies staff and train younger workers, and through efforts to address toxic cultures and attitudes. We describe some attributes of anti-harassment policies below that incorporate recent court decisions and also discuss supporting organizational practices.

Prepare for Additional Administrative Roadblocks

The ruling in *Oberweis Dairy* seems to suggest that neither an underage employee's refusal to exhaust administrative remedies nor cooperate with the EEOC in the investigation will prevent the victim for instigating legal action under Title VII. In *Oberweis* the victim's lawyer would not let her testify based on the belief of her therapist that the testimony would do her harm. The court stated that while this would result in dismissal of her case the EEOC must still provide a right-to-sue-letter to the victim allowing the case to proceed with private counsel. So long as the complaint was timely and the statutory waiting period was satisfied, the victim could sue (Bible, 2008). For employers this may place limits on the ability to achieve voluntary out-of-court resolutions for underage harassment.

Many employers have used a variety of tools in the past to provide expedited and less expensive administrative means to resolve issues arising out of the employment relationship. The best known and most widely used of these is a grievance process ending in arbitration. The courts have long supported the use of mandatory arbitration in employment disputes and have shown considerable deference to the arbitral rulings. Recent cases such as the Supreme Court's decision in *14 Penn Plaza* seem to support employer requirements that employees can be made to agree to mandatory arbitration in discrimination cases as a condition of employment, and that the agreements

can be enforced (Appleby et al., 2009). Therefore, many employers have enforced mandatory arbitration provisions even with expressed EEOC disapproval of the practice (EEOC Notice, 1997).

However, mandatory arbitration agreements involving underage workers are probably unenforceable. For example, in *In Re Mexican Restaurants, Inc*. (2005), two sisters ages 15 and 17 working for a Mexican restaurant signed employment agreements that required them to arbitrate any employment-related disputes rather than sue the company. When the sisters sued the company for alleged sexual harassment the company tried to force the sisters to use the arbitral remedy. When the two teens subsequently refused, the restaurant owners attempted to force the victims to honor the arbitration contract. However, the Texas appellate court refused to force the two girls to comply ruling that the contract was invalid because the two young girls were minors and, therefore, not legally qualified to enter into the arbitration agreement.

Elements of Anti-Harassment Policies

1. Open and early communication with young workers

The first element of a valid anti-harassment policy is that it should be clearly communicated. A common theme in underage harassment cases reported by the EEOC is that the harassment escalated over time because young workers did not know how to report harassment or because if they did report it, supervisors and/or managers failed to take the complaints seriously. Anti-harassment policies need to reflect changes in the legal environment, but they also need to be adequately communicated, employees need to be trained, and policies need to be consistently enforced or they are useless as a means for employers to defend themselves against sexual harassment suits (Flahardy, 2005). All new employees should be exposed to the topic of sexual harassment through orientation

and training and they should be provided with information about how they can get additional information either through internal sources such as an employer hot line, or externally through programs like the EEOC's Youth @ Work initiative described below.

2. Let employees know what harassment is and from whom they are protected.

Although the EEOC definition of sexual harassment has been embraced by the courts, the language is not suitable for underage workers. The policy needs to use simpler language to describe both *quid pro quo* and *hostile environment* harassment. As part of the definition the policy should offer clear examples of inappropriate behavior to illustrate unacceptable conduct. These behaviors should be reinforced in orientation through clear language, videos, role plays, and/or group discussions. Finally, the policy should make it clear that everyone, including all employees, supervisors, and managers are covered, and that employees are also protected from harassing conduct from clients, customers, or vendors, as well.

To address these problems the EEOC implemented its Youth @ Work initiative designed to educate youth workers about workplace rights and to prevent discrimination and harassment against teenage workers (Plaisance, 2008). The Youth at Work outreach program, working in conjunction with restaurant, service and retail industry groups, provides information via its Web site and through educational events to helps teenagers and young adults understand what is and is not appropriate in the workplace behavior (Flahardy, 2005). Since the initiative's inception, the EEOC has filed sixty-four lawsuits against employers around the country for discrimination against or harassment of their teenage employees (Plaisance, 2008). Additionally, the EEOC offers employers guidelines to promote voluntary compliance and prevent harassment and discrimination cases involving young

workers.

3. Make sure employees know how to report harassment and to whom

The policy needs to provide specific individuals and include prominent and visible contact information. It is critical that the reporting policy have fail-safe procedures that allow a victim to bypass the perpetrator in the complaint process by providing alternative reporting channels. If a policy does not do that it is facially invalid and cannot provide an affirmative defense for the company. While complaints should be allowed to be brought to one's supervisor, companies must provide victims an alternative mechanism such as a human resource officer or EEO ombudsman for reporting harassment claims to deal with situations in which the supervisor is the violator. Harassment policy must identify the contact person by name as well as job title, and phone numbers and email addresses must be clearly identified. This information should appear prominently on the company website as well as on bulletin boards where other legal notices appear. The complaint process must clearly identify the steps involved in filing a complaint. Managers and supervisors must be made aware that when they are dealing with underage workers, parents have legal standing and they have an obligation to address a parent's complaint as though it were from the victim, and that they cannot retaliate because of the act of a parent (Bible, 2008).

4. Make sure employees know what is going to happen when a complaint is filed

The victim needs to know what to expect when a complaint is filed such as whether the complaint can be oral or if it must be in writing. The victim needs to be aware that his or her identity will likely not be secret once an investigation begins. For both the victim and the alleged perpetrator

the nature and time frame of the investigation should be communicated, as well as the nature of the penalties for inappropriate behavior. The policy must encourage young workers to come forward with concerns and it needs to let them know that the law protects employees who report problems or participate in an EEO investigation from retaliation by the company.

5. Make sure that there is consistency and equity in outcomes

The company has a tough balancing act. If there is a finding of inappropriate conduct the company must be especially careful of avoiding remedies that penalize the victim (such as transferring him or her to another department). If the consequences of conduct for the perpetrator are insignificant the company accomplishes little and it provides a signal to both victim and violator that the company is not serious about its policy. On the other hand, the company must recognize that the alleged perpetrator may be the object of retaliation on the part of the victim. The investigation then needs to maintain a delicate balance by protecting the rights of both parties until the facts are known. The company needs to be willing to suspend, demote, or terminate serious or repeat offenders where the evidence supports the charge. The theory of negligent retention involves situations of employer post-hire negligence. These are situations in which an employer fails to appropriately respond appropriately to an employee's post-hire behaviors that create a danger to others. These behaviors could include employee violence, signs of drug or alcohol abuse, or, as in the present case, sexual abuse or harassment. Lawsuits for negligent retention charge that the employer had constructive knowledge of the employee's behavior, the employer failed to address the behaviors through appropriate supervisory processes and disciplinary standards, and is, therefore, liable for the resulting harm to other employees, clients, or customers (Lewis and Gardner, 2000).

6. The policy should encourage procedures that generate affirmative diagnostic information

While not directly part of the complaint and investigation process, anti-harassment policies should include procedures to develop affirmative diagnostic information to determine if there is evidence of problems and to assess the perceived effective of company anti-harassment measures. Two major approaches include exit interviews and attitude surveys. Evidence suggests that many underage victims simply quit in the face of continued harassment rather than file complaints. Providing a mechanism for a young worker to describe harassing behavior in an environment where there is no consequence (such as an exit interview) may provide information of potential problems. Periodic attitude surveys with carefully worded items relating to incidents of harassing conduct may be another mechanism to gauge potential problems in the workplace.

7. Develop policies dealing with workplace relationships and off-work activity

The company should develop a specific policy for dealing with relationships in the workplace. Policies forbidding coworkers to date are difficult to enforce and will often be ignored. However, the company should establish a policy that specifically forbids two behaviors: (1) having a romantic relationship with any individual with whom there is a reporting relationship as these situations are fraught with the potential for abuse, and (2) forbidding any relationships with underage workers. As part of these policies employees should be made aware of the legal landscape and be informed that having a sexual relationship with an underage employee is, *per se*, a crime and a sexual harassment violation, that it subjects the company to absolute liability, and the individual to criminal prosecution. In addition, employees need to know that off work behavior that stems from on-the-job conduct may

still be considered as work-related and, thus, illegally harassing conduct. Employees should also be told that sexually oriented behavior via social media can also be construed as sexual harassment and will not be allowed (Garmager, 2010).

Screening and Selecting Young Workers

One of the most important but overlooked ways to effectively deal with underage harassment is exercising more care in selecting employees through more rigorous screening, reference checking, and selection. At issue here is both the hiring of the youngest workers for whom this may be a first job, and for the hiring of their immediate supervisors who are also likely to be younger and less experienced than the average adult worker.

Regarding the youngest workers, experts point out that underage workers have little if any previous employment and are unlikely to understand behavior expectations of a job, workplace behavioral norms, or their rights and responsibilities on the job. This makes hiring difficult and it places an added burden on the employer to go to greater lengths to ensure that teens understand the nature of their responsibilities and the behavioral norms of the workplace (Drobac, 2008; Flahardy 2005; Wells, 2005).

While many experts agree that because of the inexperience of the applicants, effectively screening and hiring underage workers requires special skills of the interviewer. Although little, if any, selection research exists that specifically targets effective hiring tools for young workers, a number of industry consultants do offer relatively consistent recommendations for hiring teen workers. Generally they infer that school achievement, participation in extra-curricular activities, and involvement in volunteer work or community service serve as proxies for maturity and the ability to

build positive relationships and accept responsibility, so employers should screen for these indicators. In addition, most experts in selection suggest that companies should develop behavioral or situational interviews designed to provide insight into the attitudes and behaviors of the applicants. The questions would ask the young applicant to address how he or she might behave in a hypothetical situation, or they might allow the teen to explore his or her strengths and weakness. In addition, interviewers should describe specific job requirements including behavioral expectations, standards of dress, customer service requirements, and work habits, and observe the applicant response closely as well as provide follow-up questions (Wells, 2005).

For young supervisors many of the same staffing practices apply, particularly developing behavioral interview questions that elicit evidence of maturity and responsibility. In addition, since young supervisor applicants likely have work experience, more extensive reference checking with previous employers and criminal background checking is a must to identify applicants with a history of abuse. While these processes often do not reveal a history of harassing conduct (many previous employers are reluctant to reveal information regarding a past employee's behavior, and even where an employee might have engaged in inappropriate conduct, it usually will not constitute criminal behavior), exercising these cautions serves to help avoid liability based on negligent hiring.

The bottom line for hiring both underage workers and young supervisors is to exercise reasonable care and devote more attention to the hiring process that help eliminate potential for problems.

Orienting and Training Young Workers

Many teens begin their initial employment experience with little training. As far as sexual

harassment goes that is inadvisable. Once a teen worker is hired, the orientation process should actually be more detailed than that for an adult employee. In terms of sexual harassment, training should be targeted at the level of a sixteen year old and involve something other than going through a manual. Training should be detailed and address harassment through role play, behavioral modeling, or other interactive technique. In addition, some experts believe that parents should be involved in the orientation process where sexual harassment is discussed (Page, 2008). Others suggest pairing a teen employee with a trusted employee to mentor the new hire (Wells, 2005). Many companies use combinations of interactive online products, video and group discussions to train new employees. The sports apparel retailer, The Finish Line, uses a video with typical harassment scenarios with Finish Line employees wearing Finish Line clothes in Finish Line stores. After the video is shown the company engages new hires in a group discussion where they encourage new employees to ask questions and discuss about how they would handle various situations in the video. They also ask the new hires to take a quiz on the company's sexual harassment policy so there is confirmation that new hires understood company policies (Flahardy, 2005).

Training for young supervisors should involve similar techniques for understanding the nature of sexual harassment and company policies. However, young supervisors need also to understand the legal issues involving both the company and them individually. They need to know and understand that they can subject the company to liability through their actions, and that acting irresponsibly can jeopardize their careers. They need to know that the company has a no-tolerance policy, that they must be proactive in dealing with harassment, that they are the eyes of the company and must report what they see, and that they have a responsibility to act on complaints. This knowledge needs to be continually reinforced by the actions of higher-level managers to maintain a culture free from harassment.

CONCLUSION

It is clear that sexual harassment among young workers is an ongoing problem. Changes in the legal landscape regarding underage sexual harassment have served to expand the potential liability for employers, particularly those in food and beverage and other services for which the hiring of young workers is a necessity. In the face of increasing litigation and decreasing tolerance by the courts, employers cannot ignore the need to develop more effective anti-harassment policies and improved organizational practices that limit a company's legal exposure while insuring the welfare of our nation's underage workers.

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