

The Benefits Of Adopting An Effective Complaint-Reporting Procedure

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A recent federal case from Washington reminds employers of the benefits associated with procedures making it easy for employees to complain of harassment or discrimination. The case is *Matthiesen v. Autozoners, LLC*, U.S. District Court for the Eastern District of Washington (Case No. 2:15-cv-0080). *Matthiesen* involved a female employee who worked at an Autozone store for about five months. The company's handbook provided several options for reporting concerns about discrimination or harassment: discussing the situation with management, discussing the situation with human resources (HR) or contacting a confidential 24-hour hotline that the company maintained for this purpose. Telephone numbers for both the hotline and HR were posted in the store where the plaintiff worked. Over time, the plaintiff developed a personality conflict with one of her male co-workers, a sales manager. She repeatedly complained to the store manager that the sales manager had been rude or was mean to her. The store manager followed up on each of her complaints and discussed them with the sales manager. Ultimately, the store manager advised both of them that they needed to get along. Eventually, when the plaintiff continued expressing frustrations about the sales manager, he allegedly told her to "shut her f-ing mouth and make him a sandwich, [and] get in the kitchen where [she] belongs." After the manager's comments, the plaintiff never returned to work. She called in sick and then announced that she would return, but only if she was given a different schedule than the sales manager. The company declined her demands, explaining that it would be contrary to company policy that required employees to have open availability. The plaintiff also reported the incident to HR, which asked her to submit something in writing so that it could investigate. She submitted a written statement, along with notice that she was immediately resigning her position. Thereafter, the plaintiff sued the company, alleging that she was sexually harassed during her employment due to a hostile working environment and that this led to her wrongful discharge. The federal court granted summary judgment in favor of Autozone, finding that the sales manager's comments were not sufficiently severe or pervasive to create a hostile work environment. Noting that the comments were crude and offensive, the court nevertheless found that they were isolated occurrences. The court also found that the offensive, crude comments could not automatically be imputed to her employer either. For one thing, the sales manager was a co-worker or peer-- not an "alter ego" of the company. Second, the plaintiff quit before the company could respond to her harassment complaint. While she had raised issues about the sales manager being rude and mean before (each of which had been addressed), nothing

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suggested those incidents were based on her sex, instead of a personality conflict between two employees who could not get along. When she finally presented a sexual harassment complaint, she already had resigned – depriving the company of the opportunity to fully investigate the matter, verify her allegations and determine the best resolution. As such, she could not reasonably assert that the company failed to adequately or promptly respond and that such failure could be imputed to the company. The court also rejected the employee's wrongful discharge claim. Significantly, the court found insufficient evidence that her resignation was anything but voluntary. While she had clashed with the sales manager over the course of several weeks, the offensive remark attributed to him occurred on just one day – her final day of work. As such, the isolated remark was insufficient to create an intolerable working condition for purposes of a wrongful discharge claim. The case is a useful reminder that effective complaint reporting mechanisms work. Here, the company provided multiple avenues to report concerns of harassment: she could go to management, HR or call a hotline. In this case, the plaintiff took advantage of these opportunities and contacted both management and HR. It is easy to imagine that things could have gone much differently for the employer if (a) there been no means by which the plaintiff could report concerns of harassment or discrimination or (b) the company had simply ignored her complaints entirely. Most employers have policies prohibiting harassment and discrimination. For those policies to have any meaning, however, employees must be encouraged to come forward with complaints and employers must respond proactively when complaints are made. This not only protects employee rights and makes for a better workplace; it also – as this case demonstrates – helps to provide a defense against lawsuits.