

# Prevention and Corrective Policies help Employer to Avoid Sexual Harassment Liability

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By: Andrew M. Gordon

Rhonda Simpson's manager first approached her in 2002 at a local fast food restaurant because he thought Ms. Simpson looked just like Farrah Fawcett. The manager suggested Ms. Simpson come see him at the national closeout retailer (the "Company") where he worked should she ever need a job. Ms. Simpson eventually did interview with the manager and was hired by the Company as a cashier and worked her way up to assistant manager. For most of the time she worked for the Company, she did not report to the manager who initially recruited her.

The Company had a policy prohibiting sexual harassment and a hotline number for employees to use to make complaints. Ms. Simpson called the hotline in 2006 and made an anonymous tip about the manager who was allegedly sexually harassing her. The company sent a representative to investigate, but Ms. Simpson was not at work when the representative came. Additionally, since Ms. Simpson's tip was anonymous, no one knew to contact her. Meanwhile, Ms. Simpson knew that the representative was investigating her complaint but made no effort to get in touch with him. At the end of this investigation, the manager was reprimanded.

Subsequent to the 2006 investigation, Ms. Simpson again complained to about the manager's behavior, and in response, another investigation was conducted. However, Ms. Simpson was on medical leave during this investigation and accordingly did not participate. Making matters worse, Ms. Simpson told a female co-worker, who had a notebook documenting the manager's alleged harassment, not to share her notebook with the investigator.

Ms. Simpson was later injured on the job, and was eventually administratively terminated for failing to return from a leave of absence. Ms. Simpson subsequently filed a complaint in the U.S. District Court for the Northern District of Alabama claiming a hostile work environment based on her manager's alleged sexual harassment.

According to the U.S. Supreme Court, an employer will not be liable for harassment by a supervisor under Title VII if the harassment does not result in a "tangible job detriment," and (1) the employer has effective measures in

place to prevent harassment and correct it if it occurs, and (2) the employee unreasonably fails to make use of the employer's remedial measures. The district court accordingly granted summary judgment to the Company, finding that Company was entitled to this particular defense. The court found that the manager's conduct could very well be considered sexual harassment, however, the court found that the Company had both a policy prohibiting sexual harassment and an effective procedure for making complaints. The court also found that the company had conducted "reasonable" follow-up regarding Ms. Simpson's complaints. Finally, the court found that Ms. Simpson had failed to avail herself of the employer's remedial measures by not presenting herself for interviews during the two investigations as well as instructing her co-worker not to provide her notes to the investigator.

This case, *Rhonda Simpson v. Big Lots Stores, Inc.*, 2014 WL 3347943 (N.D. Ala. July 8, 2014), underscores the importance of employers having policies in place banning sexual harassment and effective mechanisms for handling complaints of sexual harassment. If you have questions about your own company's policies, procedures, and practices, Hinshaw's Labor and Employment attorneys are available to assist.

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## Topics

Sexual Harassment