

Corporate Franchisor may be Liable for Harassment of Franchisee even if Unnamed in EEOC Charge

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Plaintiffs Kimberly Kulig and Laura Baatz worked at a franchise-location of Berryhill Baja Grill & Cantina in Houston, Texas. The franchise-location was owned and operated by Defendant Phillip Wattel. The two female employees filed charges with the EEOC complaining of Mr. Wattel's sexual harassment. Mr. Wattel admitted to groping, slapping, and even biting Kulig and Baatz, arguing in his defense that Berryhill Baja Grill is a "grab-assy place."

After its investigation was completed, the EEOC determined that Wattel had engaged in sustained harassment as a manager in violation of Title VII and filed suit against the franchise location. Several months later, Kulig and Baatz joined the lawsuit and added Wattel and Berryhill Corporate as defendants. Berryhill Corporate moved for summary judgment, arguing that Kulig and Baatz had failed to exhaust their administrative remedies because they did not name the Corporate entity in their EEOC charges. The district court agreed that Kulig and Baatz had failed to exhaust their administrative remedies, and explained that the employees could not invoke any of the exceptions to Title VII's named-party requirement because they were represented by counsel when they filed their charges.

As a general rule, a party may not be sued under Title VII without first being named in a charge filed with the EEOC (i.e., the "named-party requirement"). However, the circuit courts have carved out exceptions to this rule in cases, where the unnamed party has similar interests to the named-party, or the unnamed-party has actual notice of the EEOC proceedings. In this case, the [Fifth Circuit reviewed](#) the district court's decision and rejected the lower court's conclusion that represented parties cannot invoke the exceptions to the named-party requirement. The Court noted that the point of the exceptions is to permit suits to go forward where, despite the plaintiff's failure to name the defendant in the charges, the purpose of the named-party requirement has been met. The Court concluded the presence of plaintiff's counsel is irrelevant to this inquiry. The case was remanded back to the circuit court for consideration of whether Berryhill Corporate received sufficient notice of the EEOC proceedings to satisfy the exceptions to the named-party requirement.

Parent companies must pay close attention to Title VII allegations even if not directly identified in the EEOC charge. The named-party requirement may not be a defense to liability if the company received sufficient notice of the allegations.

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