

LEGAL NEWS FOR YOUR BUSINESS

September 2022

General Business Alert

THE PITFALLS OF IGNORING A SEXUAL HARASSMENT COMPLAINT

Step lively when an employee complains of sexual harassment, especially when your own policies require it. Less than urgent action could strip an employer of the very important “*Faragher-Ellerth*” defense, an essential component of which is that the employer exercised reasonable care to prevent and promptly correct harassing behavior. In a case out of a United States District Court for the Middle District of Tennessee, *Wyatt v Nissan North American, Inc.*, Nissan had the right policy in place, but acted too slowly on an employee complaint, according to the Sixth District Court of Appeals. Three weeks from the employee’s report of sexual harassment and Nissan acting may have been too long.

The plaintiff, LaTanya Wyatt, claimed that her supervisor regularly made inappropriate sexual comments and subjected her to unwelcomed touching. She also claimed that on one occasion the supervisor brought Ms. Wyatt to a hotel room where he exposed his genitals and asked her to touch them. Ms. Wyatt tried for some three months to fend off her supervisor, and ultimately reported the harassment (although not the hotel incident) to another supervisor, David Butler. This is when Butler should have taken urgent action, particularly because Nissan’s own policies required its managers to “immediately” notify Human Resources upon receiving a complaint.

But that’s not what happened. Butler waited nine days to report Ms. Wyatt’s claims to HR (the Sixth Circuit emphasized “*nine*,” conveying that the Court considered this a very long delay). Next, HR waited an additional 13 days before taking any action on Ms. Wyatt’s complaint, citing only the Thanksgiving holiday and availability as “somewhat” playing into the delay. The federal trial court did not find this approximate 3-week delay to be particularly significant and granted summary judgment in favor of Nissan based on Nissan’s *Faragher-Ellerth* defense. The 6th Circuit, however, disagreed, reversed the trial court and sent the case back to the trial court for resolution of whether Nissan exercised reasonable care to prevent and promptly correct Ms. Wyatt’s supervisor’s harassing behavior.

Some of the best lessons are learned from the mistakes of others. *Wyatt v Nissan North American, Inc.* teaches us that *Faragher-Ellerth* is not a freebie defense. Employers need to react appropriately and without delay when they receive a complaint of harassment, and most certainly need to follow their own policies. If you have any questions or need help navigating a difficult situation, Gardner Skelton's employment team is here to help.

General Business Offering

HUMAN RESOURCE CONSULTING FROM GARDNER SKELTON

Speaking of our employment team, Gardner Skelton is excited to announce a new service that we believe will be extraordinarily helpful to our employer clients, while also much more moderately priced than attorney advice.

Please meet our new team member, Alissa Graney. Alissa has joined our team as an HR Consultant focused on helping our clients *before* they need legal assistance. With twenty plus years of both strategic and functional human resources experience, Alissa is an effective and valuable human resource professional for our clients who do not have a dedicated HR department and she can function as an extra set of hands for our clients who do. And, of course, whenever legal advice is needed, Gardner Skelton attorneys are at the ready. If you find yourself in need of support in any of the following or other HR areas, please do not hesitate to reach out for help:

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| <ul style="list-style-type: none">• <i>Compensation</i>• <i>Compliance</i>• <i>Workplace investigations</i>• <i>Employee handbooks and policies</i>• <i>HR audits</i>• <i>Employee relations</i>• <i>Performance management</i>• <i>Organizational change</i>• <i>Benefits advice and assistance</i> | <ul style="list-style-type: none">• <i>Culture challenges</i>• <i>Needs assessments</i>• <i>Leadership development</i>• <i>Hiring procedures</i>• <i>Interview techniques/strategies</i>• <i>Employee onboarding</i>• <i>New hire orientation</i>• <i>Job descriptions</i> |
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