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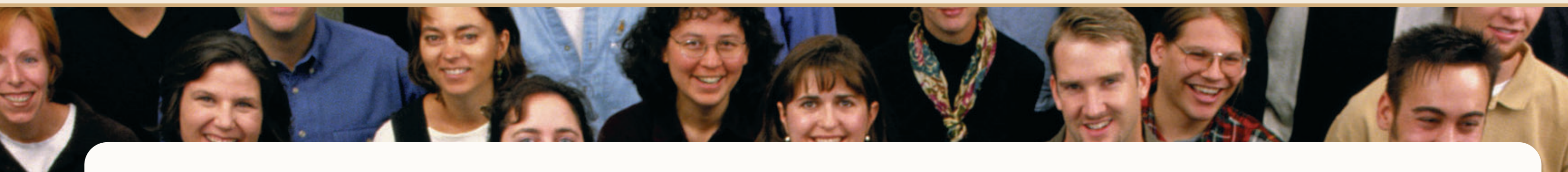
LABOR AND EMPLOYMENT NOTES

FEBRUARY 2004



EEOC SETTLES WITH TWO FLORIDA EMPLOYERS

How well do your employees follow your sexual harassment policies? Having a policy against sexual harassment is simply not enough. If you do not know how well your employees are complying with your sexual harassment policies, the EEOC appears to be willing to monitor your commitment to a workplace free of discrimination.

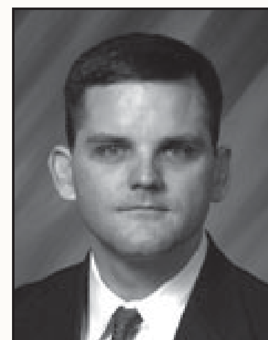
The EEOC began the New Year by announcing the settlement of two cases of employment discrimination with two different Florida restaurants. Both cases involved the sexual harassment of teenage female employees. The total settlement amount of the two cases was $525,000.

In the first case, a pizza restaurant was alleged to have created a sexually hostile working environment. The EEOC alleged that the restaurant's manager engaged in inappropriate conduct with two teenage sisters, 16 and 17, including inappropriate touching and using egregious verbal comments. The restaurant agreed to pay $325,000 to settle the case. $100,000 of the total settlement was set aside to compensate other similarly situated female employees who were subjected to similar conduct.

In the second case, three female steakhouse restaurant employees, including a 16 year old who was working as part of a high school class requirement regarding "on-the-job training," were subjected to inappropriate conduct by an assistant manager. The EEOC alleged that the assistant manager inappropriately touched the employees' hips and lower backs, grabbed their breasts, and made inappropriate comments. The restaurant agreed to pay the three employees $200,000.

In addition to the monetary settlement, both restaurants agreed to a consent decree that requires each to (1) train its employees on sexual harassment and (2) display a laminated poster instructing employees on their rights under anti-discrimination laws and affirming the restaurant's commitment to comply with those laws. The consent decree also allows the EEOC to monitor both employers on an on-going basis.

The EEOC's regional attorney reportedly stated that the facts of the two cases were particularly compelling because both cases involved the egregious treatment of young people who were likely receiving their first introduction into the workforce.



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EMPLOYERS MISTAKENLY ASSUME THAT THE NATIONAL LABOR RELATIONS ACT DOES NOT APPLY TO THEM

Many employers mistakenly assume that the National Labor Relations Act ("the NLRA") can have no applicability to them as long as their employees are not represented by a union. It is important to note, for example, that Section 7 of the NLRA provides in part that employees shall have the right to engage in "concerted activities for the purpose of . . . mutual aid or protection." The NLRA has, because of this provision, been interpreted to protect a variety of employee actions. In 1962, for example, the U.S. Supreme Court in NLRA v. Washington Aluminum Co. agreed with the National Labor Relations Board in ordering an employer to reinstate and make whole seven employees who were discharged for leaving their work without permission on claims that the shop they were working in was too cold. It is important, therefore, for covered employers to consider the implications of the NLRA regardless of whether the employees are represented by a union.

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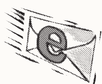

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