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Sixth Circuit Clarifies Definition of 'Joint Employers,' Explains Key Sexual Harassment Defense Under Title VII

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Rapid Report

A sexually hostile work environment claim triggered the Sixth Circuit Court of Appeals to explain, in a case of first impression, how the number of employees working for two different employers may be counted in the aggregate to satisfy the jurisdictional requirements of federal civil rights laws.

In addition, the appellate court allowed the case to go to a jury trial because the employer did not have an effective sexual harassment policy and failed to train its employees.

The plaintiff in *Sanford v. Main Street Baptist Church Manor, Inc.*, who brought Title VII claims, was employed by Main Street Baptist Church Manor (the Manor), which had had no more than four to six employees. Because Title VII (the federal civil rights law) only applies to employers having 15 or more employees, the Manor filed a motion to dismiss the complaint. However, the Manor had an agreement with Southeastern Management Center to provide management of the property, which potentially raised the number of employees to the minimum number necessary to file a federal civil rights claim. Based on this agreement, the lower court denied the motion to dismiss, which had argued that the Manor had an insufficient number of employees to be subject to Title VII.

The Sixth Circuit reversed and remanded the case because the lower court had not applied the correct test to determine whether the Manor and Southeastern could be "joint employers." If they could, employees of Southeastern would be counted in determining whether the Manor had sufficient employees to satisfy the jurisdictional requirements of Title VII.

The Sixth Circuit had to resolve the issue of "whether and how different employees of joint employers may be aggregated for purposes of satisfying the numerosity requirement." In coming to its conclusion, the court determined it was appropriate to consider employees of joint employers in the aggregate, relying in part on the Equal Employment Opportunity Commission's Compliance Manual.

The manual explains that "[t]o determine whether [an employer] is covered, count the number of individuals employed by the [employer] and the employees jointly employed by the [employer] and other entities." For example, if the employer has 13 regular employees and 10 more from a temporary agency, the employer is covered under Title VII because it has 23 employees in the aggregate. However, other

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employees of the temporary agency, who are not assigned to the employer, are not counted because the employer exercises no control over them.

In remanding the case, the Sixth Circuit ordered the lower court to determine whether aggregation of Manor's and Southeastern's employees was appropriate. To make this determination, the lower court was instructed to consider which Southeastern employee was assigned to work at the Manor; whether the Manor had the authority to hire, fire or discipline the individual; affect his/her compensation or benefits; the degree of supervision over the employee's schedule and daily assignments; and other relevant factors. In short, Southeastern employees, controlled by the Manor, had to be counted as employees of the Manor.

One other issue addressed by the court is worth raising here. One of the claims the plaintiff asserted was sexual harassment based on a hostile work environment. The employer raised the affirmative defense that it had exercised reasonable care to prevent and correct any sexual harassment experienced by the plaintiff.

However, the Sixth Circuit disagreed because the employee handbook did not: (1) require supervisors to report sexual harassment, (2) allow for informal or verbal complaints, and (3) permit the complainant to bypass a harassing supervisor.

Moreover, the plaintiff testified that, while he had attended meetings where the discrimination policy was discussed, there had not been any training or meetings to discuss sexual harassment. Therefore, the lower court erred in dismissing the sexual harassment claim based on this affirmative defense.

What does this mean to your company? First, if your business employs fewer than 15 employees, you may still be subject to Title VII and other federal civil rights laws, if your company uses employees from a temporary agency, or if it has a relationship with another entity and exerts sufficient control over some of its employees. Second, if your company has not recently updated its sexual harassment policy or conducted sexual harassment training for its employees, the company may be denied use of the key defense to sexual harassment claims based on a hostile work environment.

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