

'Third-Party' Harassment: Is the Customer Always Right?



There is only one boss. The customer. But what if the customer or another outsider is harassing one of your employees? Can your organization be held liable? One court recently warned employers against adopting the “hear no evil, see no evil” strategy.

Case in Point: Lori Freeman, who is black, worked as a receptionist for a North Carolina tile manufacturer. She had daily contact with a third-party sales rep who was a real piece of work. The obnoxious rep would make comments to Freeman’s supervisor about “black b*****” and he would use the “n word.” Freeman overheard all this and asked the rep to stop. It continued.

In fact, on one occasion, the sales rep showed Freeman a picture of a nude woman on his cell phone and said, “This is what I left in my bed to come here today.” Another time, the sales rep was using Freeman’s phone and before he hung up he held the receiver to his buttocks and passed gas into it. All of this while Freeman’s supervisor watched.

Freeman complained about all of this to that supervisor, but the boss just ignored her complaint.

These shenanigans lasted three years until Freeman finally went to the HR director. HR initially banned the sales rep from Freeman’s location, but eventually allowed him back on the premises under the watchful eye of, you guessed it, Freeman’s supervisor.

Freeman, upset about the possibility of encountering the sales rep, went on medical leave for two months for depression and anxiety. She returned but eventually resigned, saying the thought of running into the sales rep was too much to take.

Freeman sued her employer for third-party harassment. A lower court dismissed the claim, saying the behavior stopped once HR got involved. But Freeman appealed and won because the supervisor failed to take action when she learned of the harassment.

As the court noted, “An employer is liable under Title VII for third parties creating a hostile work environment if the employer knew or should have known of the harassment and failed to take prompt remedial action reasonably calculated to end the harassment.” (*Freeman v. Dal-Tile Corp.*, 2014 BL 119739, 4th Cir., 4/29/14)

3 Lessons Learned...Without Going to Court

1. **Lay out your Welcome Mat.** We all need customers, clients, vendors, contractors and distributors. So keep your “Welcome Mat” at the front door. Our economy needs businesses to boom.

2. ... **And your “We’re Watching You” mat.** But after these third-parties step over the threshold to your business, make sure managers are trained to watch them and immediately stop and report to HR any kind of conduct that is inconsistent with your harassment, discrimination and retaliation prevention policy.
3. ... **And your “Get Out Now” mat.** Don’t forget to place this mat down, too. Courts have repeatedly warned employers that no amount of business is as valuable as the respect your employees must be shown by all who enter your corporate home.