

# Are You 'On Notice' of Harassment if Employee Tells Wrong Manager?



Complaint-reporting procedures are key to your organization's harassment, discrimination and retaliation prevention policy. But does your policy specify *exactly* to whom employees should bring their complaints?

As this case shows, it's important that employees voice their complaints to the correct supervisor cited in that policy. Otherwise, the employee's whole case could unravel. Read on...

**Case in Point:** Jamal, a Pizza Hut worker in Texas, faced regular sexually and racially charged comments from a female store manager.

Jamal, who is black, complained to several lower-level managers about the comments. But he failed to follow Pizza Hut's anti-discrimination policy, which said harassment complaints should be directed to *the harasser's supervisor*—not just any supervisor.

When Pizza Hut officials eventually found out about the harassment, HR investigated and terminated the store manager. Still, Jamal sued for racial and sexual harassment, saying his complaints were ignored.

Pizza Hut argued that it shouldn't be held liable, based on the *Faragher/Ellerth* affirmative defense. It says employers can avoid liability if the organization uses reasonable care to prevent (and promptly correct) harassing behavior, and that the employee unreasonably failed to take advantage of any corrective opportunities provided by the employer (i.e., the complaint process).

**The result:** While a jury agreed that Jamal did face harassing behavior, the court said the employer isn't liable because it successfully used the *Faragher/Ellerth* defense.

The court said Jamal, "alerted only low-level supervisors about the harassment, who, like (Jamal), were subordinate to the general manager and had no authority over her." In doing so, Jamal failed to follow Pizza Hut's anti-discrimination policy. Also, when the company was alerted to the behavior, it quickly fired the harassing manager. ([\*Blanton v. Newton Assocs., Inc.\*](#), 5th Cir., 2/10/15)

## 3 Lessons Learned ... Without Going To Court

1. **Designate specifically.** Pizza Hut's decision to have a specific person designated by title saved the day.
2. **No one else.** Include language in your reporting procedure that no one other than those designated in the policy are authorized to receive complaints.
3. **Act promptly.** The court said that once the employer was properly notified, it immediately investigated

the claim and terminated the offender. Now that's good service.