

Decision Against McDonald's Includes Important Lessons For Employers About Sexual Harassment in the Workplace

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A decision by the Delaware Court of Chancery allowing shareholders to sue McDonald's over an alleged "toxic culture" of sexual harassment and misconduct at McDonald's provides a stark reminder that employers must actually "walk the walk" when it comes to workplace discrimination and culture. Failing to maintain and oversee enforcement of anti-harassment and discrimination policies and procedures can have significant negative consequences for an employer.

In *In Re McDonalds Corporation Stockholder Derivative Litigation C.A. No. 2021-0324-JTL*, McDonald's shareholders sued David Fairhurst, the former executive vice president and global chief people officer of McDonald's, alleging that Fairhurst breached his duties by allowing a culture to develop that condoned sexual harassment and misconduct. The shareholders claimed that Fairhurst breached his "duty of oversight," which required him, among other things, to report up the chain of command "red flags" concerning sexual misconduct. The shareholders alleged that Fairhurst's personal engagement in sexual harassment, which resulted in his termination in 2019, contributed to the toxic culture for which he was liable.

In denying Fairhurst's effort to dismiss the lawsuit, the court held that, like directors, "corporate officers owe a duty of oversight" that requires them to (1) have systems to obtain information about things relevant to their duties, and (2) not ignore "red flags" about issues relevant to their duties when they arise. Applying these standards, the court found that the shareholders had adequately stated a claim for breach of the duty of oversight because Fairhurst may have ignored "red flags" about sexual misconduct at McDonald's.

Based on allegations that Fairhurst had engaged in multiple acts of sexual harassment, such as “[pulling] a female onto his lap” during a company party, the court held that it was reasonable to infer that Fairhurst might have “turn[ed] a blind eye to red flags about similar conduct by others.”

Also under Fairhurst’s oversight, employees in more than 30 cities staged one-day walkouts to protest sexual harassment at McDonald’s. Numerous employees made complaints with the EEOC about sexual harassment and misconduct, and two class actions were filed against McDonald’s involving claims of toxic culture and sexual harassment.

This decision reinforces not only the importance of workplace discrimination and harassment policies and training, but also robust reporting procedures and the need to oversee and enforce those policies and procedures, including taking prompt and meaningful action on complaints and consequences for behaviors that run contrary to corporate culture. Having the infrastructure is important but “walking the walk” is required.

As this case demonstrates, corporate culture starts at the top of an organization and must be demonstrated by senior leadership in a very intentional way. Turning a blind eye to bad behavior creates significant legal risk.

It is therefore imperative that corporations:

- Hire and promote leaders who embrace and demonstrate the culture that is expected;
- Have and use annual personnel evaluations to ensure that senior leadership is “walking the walk” by being examples of the correct corporate culture;
- Maintain a top-down vision that bad behavior will never be tolerated and — if it is uncovered — that there are meaningful consequences;
- Use workplace climate assessments to evaluate the effectiveness of corporate culture initiatives and policies;
- Maintain robust anti-discrimination, anti-harassment, and related policies;
- Maintain robust reporting policies and procedures (including anti-retaliation policies);
- Enforce such policies by investigating any alleged policy violations;
- Implement effective corrective action where warranted, such as counseling, discipline, termination, etc.; and
- Document any and all complaints, investigations, and corrective action to show written record of adherence to policies.

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