

# Don't Let Your Lattes Go Cold When Employees Complain About Customer Harassment

## Labor & Employment Law Update

By Heather Bailey on April 23, 2019

A currently pending federal case reminds us that hospitality employers could have claims for sexual harassment and discrimination brought against them based on the alleged inappropriate conduct of their customers.

The case is *Hashway v. Starbucks Corp.* (D.R.I., No. 1:19-cv-00125), filed on March 11, 2019. The plaintiff is a former female Starbucks barista. The case arose from the alleged inappropriate conduct of a male customer. The claim was that the customer allegedly would routinely come to the store and stare at the employee, make lewd and inappropriate comments about her breasts, and generally make her feel uncomfortable.

The barista alleged that eventually she arranged with her co-workers to go to the back of the store whenever the customer would come in and return to the front once he left — which was extremely stressful on the employee. Despite this attempt to avoid contact with him, she claimed that the customer continued to come in the store and make additional lewd and inappropriate comments to her. This culminated in her claiming to have a panic attack at work in front of her co-workers. She eventually sought treatment for the anxiety allegedly caused by the customer.

According to the employee, she repeatedly reported the problem to Starbucks management both at the store and at the corporate level. The employee alleged she was told that management spoke with the customer, but no further action was taken against the customer. When the conduct continued the employee complained again. At that point, she was allegedly told that her options were to (1) serve the customer and engage in friendly conversation with him, (2) change her hours to avoid him, or (3) transfer to another Starbucks. The latter two options were not viable for her. The customer purportedly was a frequent visitor to the store and so changing shifts would not result in avoiding him. The alternate Starbucks location could not guarantee the employee weekday or full time hours, which she needed because she had another job on the weekends. As such, she claimed that she had no choice but to continue working at the store and to continue to go in the back to avoid the customer when he would come in.

Subsequently, other employees purportedly complained to management of discriminatory comments by the customer, including the alleged sexual harassing comments by the customer directed at the employee. Despite the additional reports, management and Human Resources allegedly did not take any action. Rather, the general manager and supervisor of the store were alleged to have advised the employee that she could no longer go in the back when the customer came in and must serve him.

The employee alleged that, after she made repeated complaints, she was disciplined for attendance issues that other employees were not disciplined for and then was terminated because she had been 15 minutes late for a shift, an infraction which normally did not lead to termination. The employee filed a charge of discrimination alleging that her termination was due to her complaints about sexual harassment by the customer. She then filed suit, alleging sexual harassment and that she had basically been forced to endure the sexual harassment in order to keep her job. At this time the case is still pending.

Although the facts alleged in this case may seem extreme, it is certainly not unusual in the restaurant and bar industry to have patrons (both male and female) who make inappropriate comments – even physical contact – to bartenders and wait staff. This case is a reminder that such allegation and complaints must be taken seriously, and proactive steps need to be taken immediately to protect the employee from purported inappropriate and harassing conduct.

Some general practice tips include:

- Start an immediate investigation into your employee's complaints about the customer.
- Immediately keep your employee safe and away from the harassing customer.
- Determine a course of action on how to respond to the employee's complaint, which may ultimately include asking the patron not return to your establishment. This action should not punish the employee for complaining.
- Train employees on how to react and what to say to customers who are making them feel uncomfortable.
- Train management on how to handle these situations.
- When in doubt, contact your labor and employment counsel to guide you through this process to minimize risk.

Remember, if the patron is allegedly acting inappropriately to one employee, s/ he is probably doing it to others as well. How you handle the situation could make a major difference on whether that employee will take you to court or not.

Don't Let  
Your Lattes  
Go Cold  
When  
Employees  
Complain  
About  
Customer  
Harassment