



Some Cautionary Tales

By John Donovan (Atlanta)

When the EEOC files a lawsuit against an employer or when it settles a case short of trial, it almost always issues a press release. The press release is, of course, one-sided and usually sets forth only the EEOC's view of the facts. As a result, they can be terribly embarrassing for the employer.

Here are summaries of four press releases issued by the EEOC in the past year following settlements with automobile dealerships.

Bell Road Kia and Bell Road Auto Mall in Phoenix paid **\$500,000** to settle a lawsuit filed by five former employees who alleged racial and sexual harassment. In their complaint, the employees alleged:

- widespread viewing of pornography on dealership computers;
- female employees called “c****” and “whore”;
- female employees being propositioned for sexual favors;
- a manager who masturbated while sitting behind a female employee;
- frequent racial and ethnic slurs including the “N word” and “wetback”;
- managers viewing pornography on dealership computers and openly talking about it; and
- a manager who told a Black sales person he only needed him when there was a Black customer so he could “speak his ebonics” to close the deal.

The employees also alleged that these matters were reported to managers who took no action to correct them and in fact demoted terminated or forced out employees who complained.

In addition to payment of \$500,000, the dealership agreed to a three-year consent decree under which it must train all employees on sexual and racial harassment and retaliation, and institute policies to prevent harassment and retaliation from recurring. The dealership was also enjoined by the court from any further retaliation.

Murphy Ford in Chester, PA paid **\$244,000** to settle a lawsuit brought on behalf of a group of female employees for sexual harassment and retaliation. According to the EEOC, the dealership's service manager sexually harassed female employees in his department by making sexual comments, discussing oral sex and grabbing his private parts in their presence. When an employee complained to the dealer about the harassment she was suddenly fired.

The dealership was also subject to a consent decree under which it is required to conduct training for its managers regarding the requirements of Title VII annually for the next seven years.

Thomas Dodge on Long Island, paid **\$132,250** to settle a lawsuit filed by the EEOC on behalf of female employees who claimed sexual harassment. According to the EEOC, the harassment included offensive touching, degrading and sexually explicit comments and pornographic images. Although they reported the problem to management, no corrective action was taken. Some of the female employees who complained were terminated and others were forced to resign.



The dealership also agreed to a three-year consent decree requiring it to conduct anti-harassment training, adopt a complaint procedure, post a notice about the EEOC and the lawsuit, provide a memo to all employees explaining their rights under Title VII and submit to monitoring and reporting to the EEOC.

Ray Schomp Automotive in Colorado paid **\$1,500,000** to settle five sex discrimination claims and five age discrimination claims.

The EEOC alleged that the women were subjected to a sexually-hostile work environment which included offensive verbal comments and physical touching, demotion, refusal to transfer, salary reduction and failure to promote. The Commission also alleged that the five older employees – all in their 60s – were terminated and replaced with younger employees even though there were younger sales employees with poorer sales records. A 20-something manager also made age-related remarks prior to the terminations.

In addition to paying the settlement, the dealership agreed to a two-year consent decree requiring it to conduct training for managers and employees and requiring periodic reports to the EEOC.

What Can We Learn From These Cases?

Because each of these dealerships elected to settle their case prior to trial, we will never know if the EEOC's allegations were true. In the settlements, each of the dealers specifically denied any unlawful conduct. Nevertheless, each of these dealerships will still suffer damage to its reputation because the news release leaves the impression that the dealerships must have done something wrong.

How can you make sure that *your* dealership is never the subject of an EEOC press release?

1. Make sure that your top managers are committed to enforcing your harassment policy, providing a decent workplace and setting the right tone themselves. Having a harassment policy in place will not offer any protection if top management does not demonstrate a true commitment through word and deed.

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Training Available Online

It can't be emphasized enough. To help keep our clients compliant and up to date on important laws, new and old, Fisher & Phillips offers a continuing series of free webinars. Here are some of the topics we'll be speaking on, and the lawyers presenting, in the months ahead.

For more information, or to sign up, contact Gail Rice at 404.231.1400.

May 5	Social Networking	Karen Gieselman & George Reeves
May 6	I-9 Forms & ICE Audits	Kim Thompson & Shanon Stevenson
May 11	Healthcare Reform - What Employers Need to Know	Sheldon Blumling
May 13	Religious Accommodations in the Workplace	Chris Mason & Regina Petty
May 18	Conflict Resolution & Dealing with Difficult Employees	C.R. Wright
May 20	Discipline & Termination	Bert Brannen
June 3	Crisis Management	C.R. Wright
June 10	Social Networking	Tex McIver & Deepa Subramanian
July 1	Sexual-Harassment-Free Workplace	Danielle Urban & Alva Cross Hughes
July 14	FCRA & Background Checks	Ron Brand & Lawrence McGoldrick

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- Do not allow the showroom (or any other department) to turn into a "high school locker room" where racial or sexual slurs are made with no repercussions. That sends the message to every employee that such conduct is fine with the dealership. "Boys will be boys" is not a recognized defense to a harassment claim.
- Do not allow employees (or managers) to misuse dealership computers to view or forward pornography or anything else you would not want your kids to see. Even one allegation of such conduct will paint a very poor picture of the dealership and will poison a jury against it. Therefore, it might be worth it to have your IT Manager take a quick look at where your employees are going on the web.
- Do not allow *any* employee or manager to get away with violating your no-harassment policy. Your top sales person and your top manager must be held to the same standard as everyone else when it comes to their behavior.
- Take immediate action if a manager says something improper, even if no one has complained. Because managers are the "agents" of the dealership, your dealership is liable for whatever they say or do. If a manager makes negative comments about minorities, women, or older employees, it is the same as if the dealer made the comments. When a manager does or says something improper, you should immediately counsel that manager and document the fact that you did.
- Do not allow an employee who has complained about improper language or conduct to be punished in any way. That can turn a minor problem into a major retaliation claim.
- Train Your Managers.** Managers are the ones whose conduct or inaction is costing dealerships thousands of dollars every year. Make sure they know your rules and your expectations. Demand that they conduct themselves in a professional manner. You can and should hold them to a higher standard.
- Finally, if any of the allegations in any of these cases sound familiar to you, take corrective action now. A dealership will not get sued if a manager or employee does or says one dumb thing. But if that employee is not counseled, other employees will assume that the conduct is acceptable and the problem will spread and get out of hand quickly. Don't let that happen at your dealership.

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Fisher & Phillips LLP represents employers nationally in labor, employment, civil rights, employee benefits, and immigration matters