



Labor & Employment @lert

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Sixth Circuit Raises Bar for Employer Liability in Third-Party Harassment Cases

Key Notes:

- **Intentionality Required:** The Sixth Circuit broke from most federal circuits and EEOC guidance, holding that employers are only directly liable for non-employee harassment if they intentionally created or tolerated the hostile environment. Negligence alone is not enough.
- **No Vicarious Liability for Non-Employees:** Because the motel manager was not an agent of the employer, the company could not be held vicariously liable for his conduct.
- **Practical Impact:** The ruling raises the bar for employees in the Sixth Circuit to hold employers liable for customer, client or third-party harassment. Employers face liability only where intentional discrimination or deliberate indifference can be shown.

On August 8, 2025, the U.S. Court of Appeals for the Sixth Circuit issued a significant decision in [*Bivens v. Zep, Inc.*](#), raising the standard for employer liability under Title VII for harassment committed by customers or other non-employees. The ruling deepens a split among federal circuits, with the Sixth Circuit joining a minority that requires proof of intentional conduct rather than negligence.

In *Bivens*, the plaintiff, a sales representative employed by the defendant, alleged that a motel manager inappropriately propositioned her during a sales call. After she reported the incident to her boss, her employer reassigned her to a different sales team. Shortly afterward, she was included in a layoff. The plaintiff sued her employer under Title VII and Michigan law, claiming her employer

failed to prevent the motel manager's alleged sexual harassment and retaliated against her for reporting it.

Affirming the district court's grant of summary judgment to the employer on all claims, the Sixth Circuit reasoned that because customers and clients are not agents of the employer, traditional agency principles allowing negligence-based vicarious liability do not apply. Instead, the court held that an employer may only be held directly liable for third-party harassment if it intentionally created or tolerated a hostile work environment, meaning it desired the harassment or knew that harassment was "substantially certain" to result from its actions or inaction.

In reaching this conclusion, the court rejected the majority approach adopted by the EEOC and six other federal circuits. Citing the Supreme Court's decision in [*Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 \(2024\)](#), the court emphasized that federal courts must independently interpret Title VII, which it found focuses on intentional discrimination and is therefore inconsistent with the majority negligence standard.

The decision has significant implications. Employees in Kentucky, Michigan, Ohio and Tennessee now face a much higher evidentiary burden in pursuing third-party harassment claims, as proving employer intent or deliberate indifference is far more challenging than showing negligence.

For employers, the ruling narrows exposure to liability for client or customer misconduct. However, employers should continue to respond promptly and effectively to employee

complaints and review existing harassment policies and training programs to ensure employees have clear reporting channels and supervisors understand their obligations. Importantly, the heightened standard applies only to third-party harassment claims. It does not alter the analysis for other Title VII discrimination, harassment or retaliation claims.

FOR MORE INFORMATION

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