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## New York SHRL Employer Liability for Supervisor Conduct Proves More Stringent than Title VII, NYCHRL

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Under the New York State Human Rights Law (NYSHRL), an employer is generally not liable for a hostile work environment caused by conduct of employees, even if the harassing employee has a supervisory role. The only exception to this rule is if the employer becomes a party to the conduct by encouraging, condoning, or approving it. This standard distinguishes the NYSHRL from Title VII and the New York City Human Rights Law (NYCHRL), where employer liability is more liberally imputed. The U.S. District Court for the Southern District of New York recently reinforced this standard in granting Starbucks' motion to dismiss a lawsuit involving a supervisor's rape of a teen barista.

In M.H. v. Starbucks Coffee Company, 2023 WL 5211023 (S.D.N.Y. August 13, 2023), the plaintiff was 17 when she was raped by Justin Mariani, who was then her shift supervisor at Starbucks. Mariani pleaded guilty in criminal court. Prior to the rape, Mariani was investigated by Starbucks for sexual relations and incidents with other workers, and the company issued Mariani a final written warning stating he had violated the company's anti-harassment policies. Just fifteen days after Mariani received and signed the warning, he raped the plaintiff. The rape did not occur on Starbucks' premises or during work hours. A few days after the incident, Starbucks fired Mariani. The plaintiff sued, seeking to hold Starbucks liable under a sex-based hostile work environment claim under the NYSHRL. Starbucks moved to dismiss, arguing that it had no reason to believe that Mariani would commit such a crime.

In granting Starbucks' motion to dismiss, Judge Gregory H. Woods said the statute the plaintiff sued under made a "dispositive difference here," as there were other legal avenues she could have taken that would have yielded better results, illustrating critical differences between the NYSHRL and its federal counterpart. Under Title VII, employers are "strictly and vicariously liable for 'an actionable hostile environment created by a supervisor,' subject only to an affirmative defense that an employer may raise." On the other hand, under the NYSHRL, an employer is only liable for the actions of an employee if it became a party to the conduct by encouraging, condoning, or approving it.

While the plaintiff claimed that Starbucks inappropriately condoned Mariani's prior sexual harassment, Starbucks did take disciplinary action against Mariani by giving him a final written warning. Under the NYSHRL, a good-faith response to an employee's misconduct precludes a conclusion that the employer has condoned it. Given the seriousness of the act Mariani committed soon after the corrective measures, the court acknowledged that it is certainly fair to wonder if Starbucks did enough. Nevertheless, because there were no allegations that Starbucks' disciplinary measures were disingenuous, the court held that the plaintiff had failed to plausibly plead that Starbucks had encouraged, approved, or condoned Mariani's actions, and thus Starbucks could not be held liable under the NYSHRL. The court did, however, grant plaintiff leave to amend the complaint.

NYSHRL also differs from the New York City Human Rights Law (NYCHRL), which is generally regarded as more liberal than state or federal laws. The NYCHRL subjects employers to strict liability for the conduct of their managerial employees. Per NYCHRL § 8-107(13), a company is liable for its employee's discriminatory conduct if the employee exercised managerial or supervisory authority, the employer knew of the discriminatory conduct and acquiesced in the conduct or failed to take appropriate corrective action, or the employer should have known of the employee's discriminatory conduct and did not exercise reasonable diligence to prevent the conduct.

With this case in mind, employees should be mindful of the law under which they choose to sue. Whether or not an employer can be liable for discriminatory practices of a managerial employee varies under city, state, and federal law.