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BEFORE THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS

ALASKA STATE COMMISSION FOR)
HUMAN RIGHTS, PAULA M. HALEY,)
EXECUTIVE DIRECTOR, *ex rel.*)
ASHLEY M. LAHAIE,)
Complainant,)
v.)
SUBWAY OF ALASKA, INC.,)
Respondent.)

ASCHR No. J-10-260

ACCUSATION

Paula M. Haley, Executive Director of the Alaska State Commission for Human Rights, *ex rel.* Ashley M. Lahaie, hereby alleges the following against Respondent Subway of Alaska, Inc.

1. Respondent Subway of Alaska, Inc., (hereinafter "Subway") is an Alaska corporation that owns and operates a number of Subway restaurants in Anchorage, Alaska.
2. Subway hired Ashley Lahaie to work as a "sandwich artist" on November 24, 2009. Ms. Lahaie's duties as a "sandwich artist" primarily consisted of taking food orders from customers and preparing food, restocking food and other items in the restaurant, cleaning, and collecting payments from customers.
3. On September 1, 2010, Ms. Lahaie was working at Subway's restaurant located at 800 East Dimond Boulevard in the Dimond Center Mall ("Dimond Center store").
4. The Dimond Center store was not Ms. Lahaie's usual place of work, but

1 on the night of September 1, 2010, she had volunteered to fill in at the store to cover a
2 shift for another Subway employee who was not available to work.

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4 5. As she was nearing the end of her shift on the night of September 1, 2010,
5 Ms. Lahaie was approached by her coworker, Terrill Daye, who was the only other
6 Subway employee in the restaurant. Ms. Lahaie was cleaning dishes at a sink in the
7 back of the restaurant when Mr. Daye told her to hurry up and finish so that he, his
8 brother, and Ms. Lahaie could go have sex. Mr. Daye's brother was present in the front
9 of the restaurant.
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12 6. Ms. Lahaie was extremely offended by Mr. Daye's comment and did not
13 respond or look at him. She looked down at her work and continued to clean dishes.

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15 7. Shortly after Mr. Daye told Ms. Lahaie to hurry up so that she could have
16 sex with him, Mr. Daye again interrupted Ms. Lahaie's work in the back of the
17 restaurant, telling her to come to the front of the store to "earn her tips." Ms. Lahaie did
18 not understand this remark and asked Mr. Daye to clarify it. Mr. Daye did not respond
19 to Ms. Lahaie.
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22 8. Soon after Mr. Daye told Ms. Lahaie to come "earn her tips," Ms. Lahaie
23 was washing her hands at a sink when Ms. Daye approached her. As he moved past her
24 from behind, Mr. Daye slapped Ms. Lahaie on the buttocks.

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26 9. Ms. Lahaie was again extremely offended, embarrassed, and began to fear
27 for her safety after Mr. Daye slapped her on the buttocks. She finished her work as soon
28 as she could and left the restaurant.

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1 10. Ms. Lahaie walked to her car as she left the restaurant, and Mr. Daye
2 followed her. As she neared her car she told Mr. Daye to go away and leave her alone
3 and got in her car and drove away.
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5 11. On September 2, 2010, Ms. Lahaie promptly reported the events of the
6 previous night to Subway's Dimond Center store manager, Cindy Perfect. Ms. Perfect
7 then called one of Subway's District Managers, Shannon Wyatt, and together with Ms.
8 Lahaie described to Ms. Wyatt all of Mr. Daye's offensive comments and conduct
9 toward Ms. Lahaie the previous night.
10

11 12. Subway employs the use of video surveillance inside its restaurants. On
12 September 2, 2010, all of Subway's managers, including Ms. Wyatt, were aware that
13 Subway used such video surveillance. When Mr. Daye slapped Ms. Lahaie on the
14 buttocks on September 1, 2010, it was recorded on video at Subway's Dimond Center
15 store.
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17 13. Ms. Wyatt conducted a perfunctory investigation after Ms. Lahaie
18 reported Mr. Daye's offensive comments and conduct. Ms. Wyatt spoke with Mr. Daye,
19 who denied all of Ms. Lahaie's allegations. Ms. Wyatt also spoke with other employees,
20 none of whom were present at the Dimond Center store on the evening of September 1,
21 2010, and, according to Ms. Wyatt, none of these employees reported experiencing or
22 witnessing similar comments or conduct by Mr. Daye. Ms. Wyatt did not review the
23 video surveillance that was recorded in the Dimond Center store on September 1, 2010,
24 and did not attempt to review the video.
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1 14. As a result of her investigation, Ms. Wyatt concluded that she could not
2 determine whether Ms. Lahaie or Mr. Daye was telling the truth and took no further
3 action. Ms. Wyatt told Ms. Lahaie not to work at Subway's Dimond Center store again
4 to avoid working with Mr. Daye.
5

6 15. Within several days after Ms. Wyatt's conclusion of her investigation, Ms.
7 Perfect was reviewing some of the video recorded at the Dimond Center store in Ms.
8 Wyatt's presence as part of an investigation of an alleged theft. As Ms. Perfect reviewed
9 a portion of the video recorded on September 1, 2010, she saw Mr. Daye slap Ms.
10 Lahaie on the buttocks exactly as Ms. Lahaie had reported on September 2. Ms. Perfect
11 immediately informed Ms. Wyatt of what she saw.
12

13 16. Despite being told that Ms. Lahaie's allegations were corroborated by the
14 video, Ms. Wyatt did not attempt to view the video herself and did not take any action
15 on Ms. Lahaie's complaint beyond what she had already done.
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17 17. At the time she reported Mr. Daye's behavior to Ms. Perfect and Ms.
18 Wyatt on September 2, 2010, Ms. Lahaie was in training for the position of "shift
19 supervisor" or "assistant manager" at Subway's 350 West International Airport Road
20 restaurant in Anchorage. On September 7, 2010, five days after she reported Mr.
21 Daye's behavior, Ms. Lahaie was issued an "employee warning notice" for leaving
22 another employee, who was a minor, alone in the store. This notice is the only record
23 of discipline issued to Ms. Lahaie during the tenure of her employment with Subway.
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26 18. The next day, September 8, 2010, Subway transferred Ms. Lahaie back
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1 to its 8920 Old Seward Highway restaurant and returned her to her former position of
2 “sandwich artist.”

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4 19. After it transferred Ms. Lahaie on September 8, 2010, Subway reduced
5 significantly the number of hours Ms. Lahaie was allowed to work.

6
7 20. On September 29, 2010, Ms. Lahaie filed a complaint of discrimination
8 and retaliation with the Alaska State Commission for Human Rights, alleging that she
9 was subjected to unwanted sexual advances by a coworker, that she reported her
10 coworker’s conduct to Subway and no action was taken, and that Subway removed her
11 from the work schedule on September 10, 2010.

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13 21. The Commission’s complaint was served on Subway via messenger on
14 October 6, 2010.

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16 22. On the same day it received the Commission complaint, Subway returned
17 Ms. Lahaie to the work schedule and restored many of her hours. Nevertheless, Ms.
18 Lahaie continued to work fewer hours after October 6, 2010, than she had prior to
19 September 2, 2010.

20
21 **FIRST CAUSE OF ACTION**
22 **DISCRIMINATION BECAUSE OF SEX—FAILURE TO INVESTIGATE**
23 **A COMPLAINT OF DISCRIMINATION**
24 **A VIOLATION OF AS 18.80.220(a)**

25 23. Paragraphs 1-22 above are realleged and incorporated herein.

26 24. Ashley Lahaie was subjected to objectively offensive conduct and
27 comments by a coworker while employed by Respondent Subway.

28 25. Ms. Lahaie’s coworker’s comments were severe and directed at her

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1 because of her sex.

2 26. Ms. Lahaie's coworker's comments and conduct were unwelcome and
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4 offensive to her.

5 27. Ms. Lahaie reported her coworker's comments and conduct to Subway's
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7 managers, and as a result, Subway had knowledge that Ms. Lahaie had been subjected to
8 a hostile work environment.

9 28. Despite having knowledge that Ms. Lahaie had been subjected to a hostile
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11 work environment by one of her coworkers, Subway took no action to remedy the
12 harassment or to deter potential future harassment.

13 29. Respondent Subway's failure to take action described in the preceding
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15 paragraph constitutes a violation of AS 18.80.220.

16 **SECOND CAUSE OF ACTION**
17 **RETALIATION FOR COMPLAINING ABOUT HARASSMENT**
18 **A VIOLATION OF AS 18.80.220(a)(4)**

19 30. Paragraphs 1-22 above are realleged and incorporated herein.

20 31. While employed by Respondent Subway, Ashley Lahaie reported to her
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22 employer that she had been subjected to a hostile work environment by a coworker.

23 32. Ms. Lahaie's report to her employer constituted opposition to a practice
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25 forbidden under AS 18.80.220.

26 33. Several days after Ms. Lahaie reported to her employer that she had been
27
28 subjected to a hostile work environment, Ms. Lahaie was subjected to adverse
employment actions when Subway demoted her to her former position and reduced

1 significantly the number of hours that she was allowed to work.

2 34. Subway's reduction of Ms. Lahaie's work hours was a retaliatory act that
3
4 constitutes a violation of AS 18.80.220(a)(4).

5 35. As a result of Subway's reduction of Ms. Lahaie's work hours, Ms.
6 Lahaie has suffered damages in the form of lost wages and other remuneration.

7
8 **PRAYER FOR RELIEF**

9 Wherefore the Executive Director asks for the following relief:

10 1. That the Commission issue an order declaring that Respondent violated
11 AS 18.80.220(a)(1) by failing to investigate and remedy a report of coworker harassment.

12 2. That the Commission issue an order declaring that Respondent violated
13 AS 18.80.220(a)(4) by retaliating against Ms. Lahaie when it reduced her work hours.

14 3. That the Commission order Respondent to adopt and disseminate a policy
15 of nondiscrimination under the Alaska Human Rights Law that includes a policy
16 prohibiting discrimination against employees on the basis of sex, and a policy
17 prohibiting retaliation for complaining about discrimination.

18 4. That the Commission order Respondent to obtain training of at least six
19 hours in length for its managers and supervisors on the provisions of the Alaska Human
20 Rights Law that prohibit discrimination in employment, with an emphasis on preventing
21 sexual harassment and retaliation.

22 5. That the Commission order Respondent to obtain training of at least three
23 hours in length for its employees on the provisions of the Alaska Human Rights Law that
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1 prohibit discrimination in employment, with an emphasis on employees' rights to be free
2 from discrimination and retaliation.

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4 6. That the Commission order Respondent to eliminate from Ms. Lahaie's
5 personnel records all documents and entries relating to the facts and circumstances that led
6 Ms. Lahaie to file the above-captioned charge of discrimination and any of the related
7 events occurring thereafter.

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9 7. That the Commission order Respondent to pay to Ms. Lahaie back wages
10 and any other lost remuneration caused by Respondent's discrimination and retaliation,
11 plus interest at the applicable legal rate, the exact amount of which will be proven at
12 hearing.

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14 8. That the Commission order Respondent to refrain from advising or
15 informing any other employer or potential employer of Ms. Lahaie of the facts or
16 circumstances involved in this case.

17 Dated this 27th day of March 2014 at Anchorage, Alaska.

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19
20 ALASKA STATE COMMISSION
21 FOR HUMAN RIGHTS
22 *signature redacted*

23
24 _____
25 Stephen Koteff
26 Human Rights Advocate
27 Alaska Bar No. 9407070
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