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Not on the Menu

Kathryn Casteel
Cuny Graduate School of Journalism

Zameena Mejia
Cuny Graduate School of Journalism

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On the surface Red Lobster is commonly known as a family-friendly, casual restaurant, that promotes and serves “seafood with standards.” But behind the kitchen door of a store location in Salisbury, Md., the standards for equal employment were not as high.

Racheal Cox wanted to cook at the Red Lobster in Maryland’s Eastern Shore to earn a steady income and provide for her and her son, according to her discrimination complaint filed in 2011 with the US Equal Employment Opportunity Commission (EEOC).

She hoped for a good number of hours. She juggled arranging her work schedule to fit in childcare. She did not expect what happened next.

Her boss, Ryan Fisher, “started talking trash,” she recalled. Then it got worse. “He used to come behind me and act like he was trying to wrestle and put me in a headlock and bite me on the neck,” she later wrote. There was the time he picked her up and put her on the counter. She ended up with a large bruise on her leg.

He asked for sex, made lewd comments and suggested she join him in a threesome with his girlfriend. Cox said he rubbed his groin against her and other female employees.

The chef tried to dissuade him. “I would just tell him that he was nasty and that I couldn’t believe the things he was saying,” Cox said.

But she did not want to cause too much of a fuss. “He did my schedule,” she said, “so I didn’t want him to get upset and fire me, so I didn’t tell on him. I also didn’t want him to take my hours away or make me work when I didn’t have a sitter to watch my son.”

What Cox recalled is not particular to just one Red Lobster. There are similar cases against national restaurant chains including Chipotle, McDonald’s, Dunkin’ Donuts, Burger King, Sonic Drive-In, Panda Express and Dairy Queen.

There are regional chains like Texas Roadhouse, where a Columbus, Ohio manager was the subject of repeated complaints to the owner. He was not dismissed until surveillance footage caught him during the workday groping a 17-year-old waitress.

From a swanky New York steakhouse to a diner in New Hampshire, these establishments and others across the nation have all either lost or settled sexual harassment complaints in the past six years. Typically settlement deals include no admissions of wrongdoing, but restaurants have paid out.
A NYCity News Service review of cases filed with the EEOC for sexual harassment, plus complaints filed with local and state discrimination commissions, found restaurants have agreed to pay at least $15.3 million from 2010 to 2016 for 45 cases involving sexual harassment charges. There may well be others.

In 2011 a review of EEOC discrimination suits by MSNBC found that more than a third of all sexual harassment cases came from the food service industry. A nationwide survey in 2014 by the Restaurant Opportunities Centers United, an advocacy group that calls for fair treatment and improved wages for food industry workers, found that over two-thirds of restaurant employees surveyed experienced sexual harassment on the job. Robert E. Weisberg, an EEOC attorney in Miami, wrote after one case, “a high percentage of sexual harassment charges are filed by women in the restaurant industry.”

Elsewhere, research suggests women of color may also face incidents of both sexual and racial harassment.

“Harassment has no place in any work environment, and is an issue we take seriously,” said Cicely Simpson, a spokeswoman for the National Restaurant Association, a trade group that represents large chains as well as many smaller dining establishments. “As the largest employer of teens and first job for one in three Americans, restaurants are the first professional environment for millions of people. That’s why many restaurants have implemented robust training programs that can serve as a model for other employers. As the industry of hospitality, we are strongly committed to continuing to work with our members to build positive workplaces.”

The Restaurant Opportunities Center surveyed close to 900 restaurant workers in 39 states and found that the majority of women -- 60 percent -- reported being sexually harassed. As demonstrated in the experience of Cox, the survey also found that unwanted sexual behavior most often comes not from a groping customer, but from co-workers.

Most of the time, those being harassed are women. But men, according to the survey and EEOC cases, are also victims.

In addition, experts have raised concerns about whether the need for earning tips facilitates an environment where servers are reluctant to complain about mistreatment.

Cox first tried to resolve her plight without the legal process. She complained to a Red Lobster general manager, Michael Mannion. Nothing changed. Maybe she should not have been
surprised because Mannion, she later alleged, had made some crude comments himself around the restaurant.

In February 2011, Cox filed a formal complaint with the EEOC. After investigating the accusations, the federal agency filed a lawsuit against Red Lobster two years later. Cox and two other women testified that Red Lobster did not take proper steps to address harassment. In 2015 the two sides settled the case, with Red Lobster—while not admitting guilt—agreeing to pay $160,000 and update procedures for handling sexual harassment complaints.

Today, a Red Lobster representative said, “We have clear policies against harassment of any kind and conduct ongoing training to reinforce these policies.”

While Cox and others pressed their cases to federal regulators, Saru Jayaraman, a founder of Restaurant Opportunities Centers, said its survey pointed out that the restaurant industry’s problem is even larger than what has been documented in official records. “What do I think you’re seeing in our data versus the EEOC’s data is just a massive amount of unreporting of the issue,” she said.

**SUBHEAD: HARASSMENT TYPES**

While the Restaurant Opportunities Center survey found the majority of women reported being harassed, so did 46 percent of men.

At Sparks Steak House, an upscale restaurant in midtown, New York City, 22 male waiters said they were subject to unwanted sexual advances and comments from a male manager, Abdou Elshabeiny, over an eight years period.

At the restaurant once named “The Greatest Steakhouse in Manhattan” by the New York Post, Elshabeiny grabbed several waiters by the buttocks and asked about the size of their penis, according to an EEOC lawsuit filed in 2009. One waiter recounted, “he used to lick his finger and stick it in my ear.” Another recalled how the manager told him he wanted to have sexual relations with him.

One waiter complained to a manager, but, he recalled, was told to, “keep quiet” or else be fired, and that Elshabeiny was “only joking.”

Michael Cetta, the restaurant’s owner, testified he was told about Elshabeiny’s conduct, but did not believe the accusations and did not want to probe the complaints. “I didn't want to do any investigating because I am not an investigator,” he later said.
The lawsuit was settled in 2012 for $600,000. The restaurant admitted no wrongdoing and established a hotline for waiters to report any further incidents.

Researchers have also raised concerns about minorities being vulnerable to harassment.

A survey by Hart Research Associates in 2016 of female fast food workers found 40 percent of experienced unwanted sexual behavior on the job, including 28 percent who have, in addition, experienced other difficulties like racial harassment.

In addition, the survey found women of color are especially likely to report facing negative consequences when talking to their employer about unwanted sexual attention: 34 percent of African-American women and 26 percent of Latinas reported at least one negative reaction, compared with 17 percent of white women.

Kimberle Crenshaw, an attorney who represented Anita Hill during the contentious appointment hearings of Clarence Thomas to the US Supreme Court, is founder of the Center for Intersectionality and Social Policy Studies, has termed harassment that is both racial and sexual as having “intersectionality,” and said it not unusual.

Tanya Hernandez, a Fordham University School of Law professor who has examined these issues, found that in workplaces in general, women of color do not use a company’s internal complaint protocol for various reasons, including greater fear of losing their jobs.

“When you're looking at the restaurant environment, there is an added layer there allowing people to perceive it as an inherently sexually harassing environment,” Hernandez said in a telephone interview. “Depending on the uniform the girls are asked to wear and being subservient, often there is this implicit idea that being sexualized is part of the service. [Women of color are in a] more subordinate position as sort of racialized objects which makes them a bit more vulnerable to the harassment.”

Labor data and experts show that white women are more likely to work as waitresses and hostesses, while women of color tend to work behind the scenes in kitchens and elsewhere in restaurants. By tending to have workers of different backgrounds in different sections of restaurants—the “front of the house” versus the “back of the house” — managers may worsen problems, according to Carolyn Sachs, a Pennsylvania State University professor of feminist studies who co-authored a paper titled “Front and back of the house: socio-spatial inequalities in food work.
Barbara Arnwine, president of the National Lawyers' Committee for Civil Rights Under the Law said. “The intersectionality of race and gender is a growing problem” in various industries that needs to be addressed further by the EEOC.

SUBHEAD: HOW RESTAURANTS CAN REDUCE HARASSMENT

Amali, an upscale restaurant in midtown Manhattan, is a dining establishment that prides itself on taking steps to prevent sexual harassment.

James Mallios, Amali’s managing partner, was a plaintiff attorney, and that shaped his views on trying to reduce harassment. He said he had “seen enough bad things” and “wanted to try to avoid them at all costs.”

“I definitely had it in my mind that, having seen the worst that employers can do, I wanted to try as much as we could to aspire to be as good as we can be,” Mallios said. “I wanted to build a happier place where people would stick around.”

But he knows the reality of working in restaurants.

“There's a high level of stress in the immediacy of trying to perform at a certain level, tempers flare in these restaurants, especially in the kitchen, where they’re working in an environment that's very hot, they're tired, on their feet all day,” Mallios said. “We really try to emphasize manners here in an environment where it's sometimes easy to lose our manners.”

He recalled one incident of same-sex sexual harassment that was “a mess.” He added said workers did not openly discuss the issue, “they were quiet,” but when the incident came to his attention, he conducted an investigation and terminated the aggressor.

In 2014, Amali worked with the Restaurant Opportunities Center and others on training, policies and educational materials for employees with the goal of preventing workplace sexual harassment.

“By working on having a culture that discourages this type of behavior, practicing policy in less serious instances, and using dispute-resolution in non gender or race-based scenarios, I think that gave our workers the confidence that we would then employ the same methodical dispute investigation and resolution when it came to those [smaller issues] as well,” Mallios said.
“You know we’re not always perfect, but it's definitely part of our culture to try to aspire to find a better way of doing things,” he said.

**SUBHEAD: CUSTOMERS**

The Restaurant Opportunities Center found managers and co-workers were responsible for most sexual harassment. But customers also cross the line, and most often it happens when the server is a woman. About 80 percent of waitresses face unwanted sexual comments from customers, according to the survey. About two of five were pressured for dates.

Few EEOC cases are based on the customer as the source of harassment. But at a Palm Beach, Fla., franchise of the regional chain Hurricane Grill & Wings, a waitress, Stacy Sorenson, and other waitresses said they experienced groping and lewd comments from a frequent customer, Commodore Bradford, a Palm Beach County deputy sheriff.

The deputy sheriff world visit to the restaurant several times a week and linger. He made comments like, “your tits are really nice” and once asked a waitress to participate in sexual acts with him and his wife.

Sorenson constantly complained verbally and in writing about Bradford’s crude behavior, not only the owner of the restaurant, but also to a Hurricane Grill vice president. She was told management would address the situation. Soon Sorenson got fewer work shifts and was later fired.

Sorenson pursued her complaint to the EEOC because her employer failed to address the problem. Hurricane Grill settled for $200,000 in February of 2012.

“Hurricane Grill and Wings has a responsibility to protect their employees regardless of the status of the harasser,” said EEOC attorney Weisberg, who handled the case.

This kind of case does not surprise Kimberly T. Schneider, Illinois State University, a psychology professor who has studied harassment. “Given usual norms for customer service that tend to give the customer quite a bit of power, when these workers are targeted, they may not receive much support,” she said. “Workers may be instructed to just put up with it.”

Financial insecurity coupled with inadequate wages are the key components that foster an environment for sexual harassment in the food services industry, according to of Restaurant Opportunities Centers
The national food services industry is made up of nearly 11 million workers and two-third of those who rely on tips are female. The federal minimum tipped wage that most servers, bartenders, and other restaurant employees work for is $2.13 an hour. This rate hasn’t changed since 1991.

Eight states have eliminated the tipping wage, several more are raising tipped wages. Jayaraman said states that have eliminated the tipping wage have seen the greatest reduction in sexual harassment in the industry.

“The root problem is a wage structure that essentially forces women to not just tolerate all kinds of inappropriate customer behavior,” said Jayaraman, “but also essentially sell themselves or subject themselves to objectification in order to earn their money, and that is actually encouraged by managers in order to earn money.”

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Restaurant workers who want to complain about sexual harassment in the workplace often have formal, complaint systems offered to them—with the catch of facing a long and difficult process that makes them susceptible to state-specific caveats.

Workers are first encouraged to follow their company’s complaint process. If that does not work, they can file a complaint with the US Equal Employment Opportunity Commission. Some states, like Massachusetts, New York and many others offer additional avenues with state commissions that may also investigate concerns about harassment.

Expert acknowledge legal restrictions, fear of retaliation, and worries about losing a job are all reasons why restaurant employees who face sexual harassment are reluctant to come forward.

One group of McDonald’s workers found their complaint about sexual harassment was dismissed because they waited to long to raise the accusations.

The EEOC finds reasonable cause to pursue roughly six percent of sexual harassment complaints filed every year. In 2015, 6,822 sexual harassment charges were submitted to the agency and 11 percent were settled in negotiations.
This raises concerns to some about whether the agency has the capacity to fully review complaints. Sexual harassment “is just so prevalent,” said Sheila Maddali, director of the Restaurant Opportunities Centers United branch in Pennsylvania. “I think the EEOC on a statewide level and the federal level does not really fully have the capacity to kind of address all the cases.”

The term “sexual harassment” itself is moderately new. The first well known use of the term in its modern understanding was used in 1975 by three professors at Cornell University’s Human Affairs Program, Lin Farley, Susan Meyer, and Karen Sauvigne. The three were debating on the correct words to use when describing unwanted sexual advances at work in preparation for a movement to speak out against it when they finally settled on sexual harassment.

Early cases of sexual misconduct at work before 1980 largely failed. Verbal and physical sexual advances at work were seen as natural actions of attraction to the opposite sex. These accounts were out of reach of Title VII of the Civil Rights Act of 1964 in protection against sex discrimination.

In 1980, the EEOC introduced guidelines that declared sexual harassment a violation of Title VII. The Commission then established criteria for determining whether conduct of a sexual nature was actually sexual harassment, and in which circumstances an employer should be held liable.

The standard of unwelcomeness entered legal lexicon in 1986 after a case involving Mechelle Vinson, a woman who repeatedly experienced sexual assault from her employer while working at a bank (Meritor Savings Bank v. Vinson). Vinson, in fear of losing her job, submitted to the conduct. Originally the argument in court was that the conduct, though unwanted, was voluntary and rendered a consensual relationship.

Following Vinson’s case, “unwelcomeness” was established as a standard for pursuing a hostile work environment claim against an employer.

Now, to pursue a claim, the law requires that the person complaining must show that any sexual advances or harassment were “unwelcome.” Part of the definition of “unwelcomeness” is to gauge the atmosphere of the workplace, given that some workplaces are more formal than others.

“Much of the feminist movement was actually in support of the idea of unwelcomeness standard,” said Tanya Hernandez, a Fordham University School of Law professor. “Because here’s what it was going to be replacing – a rape format.”
Before the unwelcomeness standard was introduced, workers would have to prove they did not consent to sexual conduct. That often proved difficult, since workers tended to fear that managers would retaliate against them.

Unwelcomeness sets a lower bar.

“The court will look at what the woman wore, what kind of language she used, like if she had foul language or participates in what they view as sexual horseplay,” said Hernandez. “This is all viewed as relevant to looking at the context of whether or not conduct was unwelcome.”

In a lawsuit, an employer could counter that an incident was not unwelcome if the worker did not complain internally.

The EEOC task force said the agency could do a better job for non-English speakers, and explaining how the complaint process works.