



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMse15010058

██████████,
Complainant,

v.

BENJAMIN'S FAMILY RESTAURANT,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission,") pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b).

On January 23, 2015, ██████████ ("Complainant") filed a Complaint with the Commission against Benjamin's Family Restaurant (hereafter "Respondent") alleging discrimination on the basis of sex in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint. An investigation has been completed. Both parties have been given the opportunity to submit evidence. Based upon a full review of the relevant files and records and the final investigative report, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was subjected to sexual harassment. In order to prevail, Complainant must show: (1) she was subjected to unwanted behavior of a sexual nature; (2) the behavior was sufficiently severe or pervasive such that it would adversely affect a reasonable person's employment; (3) she made it known that the comments were unwelcome; and (4) Respondent failed to take corrective action to address the hostile work environment. Simply stated, there is sufficient evidence to believe that a discriminatory practice occurred as alleged.

By way of background, Respondent hired Complainant in July 2014 as a waitress. At all times relevant to the Complaint, Respondent lacked anti-harassment or sexual harassment policies by which employees could report allegations of harassment. During her tenure with Respondent, Complainant alleges that Respondent's kitchen staff subjected her to sexual comments such as "can I grab your tits" and actions such as grabbing her breasts. Specifically, Complainant alleges that a male cook by the name of ██████████ grabbed her breast and that the harassment occurred from around November 2014 until her resignation in December 2014. While Complainant asserts that she informed Respondent's owner about the harassment, she asserts that the owner called her a "bitch" and told her that "girls should stay up front and out of the kitchen." Complainant's



assertions are corroborated by an independent witness who asserts that the same staff member, [REDACTED], touched her breasts and butt. The witness also asserts that she heard the owner call Complainant a “bitch” when she reported the allegations and told to “stop flirting” with the cooks. Both witnesses deny flirting or otherwise encouraging the inappropriate behavior.

Despite Respondent’s assertions, evidence shows that Complainant was subjected to a work environment sufficiently severe such that a reasonable person would resign their employment. Moreover, Respondent admits to telling Complainant to “stop flirting with the male staff” instead of addressing her concerns regarding the work environment. No evidence has been provided or uncovered to show that Respondent took prompt remedial action to address Complainant’s assertions and an independent witness corroborates Complainant’s assertion that Respondent’s owner referred to Complainant as a “bitch” after she raised her concerns. Simply stated and based upon the aforementioned, probable cause exists to believe that a discriminatory practice occurred as alleged.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission’s Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

September 1, 2015
Date

Akia A. Haynes
Akia A. Haynes, Esq.
Deputy Director
Indiana Civil Rights Commission