
Photo Credit Vytautas-Kielaitis

# Is McDonald's Liable to Employees for Customers' Violence?

By EVAN S. WEISS

In a recent lawsuit, over a dozen Chicago-area McDonald's employees allege that the fast-food company has enacted nationwide practices that have increased the daily risk of violence in their workplace. The lawsuit, filed in Cook County, Illinois, is asserted against McDonald's Corporation and several area franchises.

## The Factual Allegations

The Complaint paints a grim picture of daily life under the golden arches. Among other incidents, Plaintiffs in the lawsuit assert that they have been subjected to threats of gun violence, pelted with thrown food items, pepper sprayed, had customers expose themselves, and have been groped. One Plaintiff reported being pushed against the wall while someone spit in her face, and another alleged being hit across the back with a "wet floor" sign. While the Plaintiffs only include employees in the Chicago area, the Plaintiffs allege that their experiences are part of a nationwide pattern at McDonald's restaurants, with news reports of violence occurring at McDonald's coming roughly every 36 hours.

The basis of Plaintiff's lawsuit is that several of the company's policies have negligently increased the risk of violence faced by employees. Specifically, the Complaint alleges that keeping the stores open late at night increases the risk of violent crime, but that the Company failed to adhere to best practices for operating a late-night business. For example, the Complaint alleges that McDonald's recent efforts to lower or reduce counter space between customers and employees has eliminated a necessary physical barrier. Further, per the Complaint, the high volume of window advertisements reduces employee's ability to see outside of the store.

The Complaint also alleges that the training given to employees and managers, including at "Hamburger University," is lacking. In particular, the Complaint states that employees do not receive even basic security training, and that some managers discourage reporting incidents to police out of a fear of harming business.

## McDonald's Store Ownership

Many fast-food and other chain retail establishments expand through the use of franchised stores. McDonald's is no exception. According to the allegations in the Complaint, of the 130 Chicago-area McDonald's, 100 are franchises, while the other 30 are owned by a subsidiary of McDonald's.

While franchises may look, smell, and feel the same as corporate owned stores, the difference in ownership structure is often critically different with respect to legal issues. Generally speaking, a franchise store is owned by an individual or company that is separate from the company that owns the larger chain. A franchisee pays the chain for the license to use the branding, gain the know-how, and sell the products of the chain.

Often, part of the franchising agreement is that franchisees follow certain standards and procedures set out by the chain, designed to guarantee a certain level of uniformity for customers going to stores owned by different franchisees. So, if you stop at multiple McDonald's on a road trip, even if the stores are all owned by different people, the Big Mac at each will feature the same recipe of two all-beef patties, special sauce . . . you know the rest.

## How Franchising Plays into Employment Litigation

There are many reasons that factor into the decision of whether to utilize franchising agreements in expanding a business. One of the intended (but not always successful) goals is to limit the increased exposure to employee litigation that often comes with expanding business operations. Because newer stores will be owned by franchisees, the employees at those stores will work for the franchisee, and not the original business owner. In theory, therefore, the liability from employee-initiated litigation will fall on the franchisee.

The Plaintiffs in the Complaint against McDonald's allege several reasons why McDonald's itself can be held liable for the litigation in question. First, the Complaint alleges a form of premises liability. Often, even where a store is owned by a franchisee, the real estate is owned by a corporate arm of McDonald's. In such cases, McDonald's franchise agreements include a requirement to lease property from corporate McDonald's for the store.

The lawsuit also asserts that corporate McDonald's is liable because it alleges that the harm here—an increased risk of workplace violence—is caused by the policies set by McDonald's corporate that franchisees are required to follow per their franchise agreements. In particular, the Complaint alleges that McDonald's has required franchisees to remain open later than most other fast-food franchises. Moreover, as detailed above, the complaint alleges that McDonald's controls the physical design of each store. Despite requiring later hours, the Complaint alleges that the design of the stores ignores best practices for avoiding violence. Among other alleged deficiencies, recent specifications for redesigns have given customers easier access to cash registers, drive-thru windows permit access to customers, and bathrooms are not visible from the employee counter. According to the Complaint, franchisees may not alter the design of their stores without McDonald's consent.

Further, the Complaint asserts that corporate McDonald's exercises control over employee training, but that such training has been inadequate to protect employees against workplace violence. In fact, the Complaint alleges that McDonald's provides no training on workplace safety and violence.

Perhaps most interesting, Plaintiffs allege that they are entitled to money damages against McDonald's under Illinois's workers' compensation laws. Generally speaking, money damages are not available against employers under Illinois's workers' compensation system. The Plaintiffs assert, however, that as McDonald's has disclaimed an employment relationship with employees through the use of franchisees, McDonald's is not covered by that bar on recovery. If ultimately successful on this theory, Plaintiffs in similar circumstances may be able to have their proverbial apple pie and eat it too.

## Takeaways

As an initial matter, it is important to know that the litigation discussed herein is in its very early stages. The allegations are just, at this stage, allegations. Further, the legal theories advanced by Plaintiffs may ultimately prove unsuccessful. However, all employers can take away some important points from this litigation. First, while much of the focus in preventing employee litigation is on wage-and-hour compliance and discrimination and harassment training, there are many other areas of which to be mindful. In addition, franchising and other corporate structures may have many advantages, and may even limit some legal exposure, but none should be viewed as a magic bullet against employee litigation.

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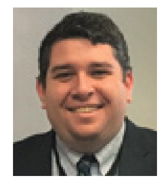


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