

EMPLOYER ALERT

PROTECTING YOUR BUSINESS FROM CLAIMS OF WORKPLACE SEXUAL HARASSMENT

Now, more than ever, employers are well advised to create and implement policies prohibiting sexual harassment in the workplace. A well drafted policy is an essential part of any employee handbook and will serve at least two very important functions. It will announce to your employees that sexual harassment is a form of discrimination that is unacceptable and will not be tolerated, thereby promoting a harassment free work environment. And, just as importantly from the employer's perspective, it is the first line of defense against employer liability for sexual harassment.

An effective anti-harassment policy must inform and educate your workforce, including supervisory employees as well as the rank and file. It must define sexual harassment and provide explicit procedures for reporting instances of such conduct. And, it must also inform employees of the steps you will take to investigate and act upon complaints of sexual harassment.

Recent court decisions in New Jersey have provided a road map, setting forth the factors that courts will take into account when evaluating an employee's claim of sexual harassment and determining potential employer liability. They include, at a minimum, the following:

- Formal written anti-harassment policies defining and explicitly prohibiting harassment in any form;
- Spelling out the procedures to be followed in reporting a claim of sexual harassment, which must include alternate reporting steps to accommodate cases of supervisory sexual harassment;
- Distribution of the policy to all employees to raise awareness of the anti-harassment policy as well as a no-retaliation policy for reporting instances of harassment;
- Implementation of the policy through training sessions designed to educate employees and supervisors regarding the identification of sexual harassment and the precise methods for reporting of claims; and
- An effective mechanism for the prompt, thorough and, to the extent possible, confidential investigation of reports of sexual harassment.

An employer able to demonstrate commitment to eliminating sexual harassment in the workplace will be well positioned to argue against the imposition of liability. As such, as singularly important as any of the above factors will be the court's view of the employer's actual efforts to curb harassment and discrimination. If a policy is nothing more than a piece of paper in an employee handbook that is not widely distributed and which is not implemented through education, training and use, it will not serve as a valid defense to employer liability.

The foregoing is intended as a general discussion of the steps New Jersey employers can take to protect their businesses against liability for claims of sexual harassment. As with any legal topic each case requires a thorough analysis of the facts in order to determine the best steps for each individual workplace. As such, it is not intended to be legal advice. Employers should consult with legal counsel.

Lawrence Z. Kotler is a partner with the law firm of Carlin & Ward, P.C. in Florham Park, New Jersey. Mr. Kotler regularly represents employers and employees in employment law matters in New Jersey, including the defense and prosecution of employment related claims. He has extensive experience counseling employers in day to day employment matters and the preparation of employee handbooks, confidentiality and non-competition agreements and related policies and agreements. Mr. Kotler also represents employers and employees in negotiating employment contracts and separation agreements.