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ANTI-HARASSMENT POLICIES, TRAINING AND PROMPT REMEDIAL ACTION CAN INSULATE COMPANIES FROM LIABILITY

By Eileen Oakes Muskett

The recent verdict in favor of the plaintiff in the *Marchuk v. Faruqi & Faruqi* case reminds us that employers must take their obligation seriously to provide a harassment-free work environment. Employers, particularly in New Jersey, are often counseled that failure to implement an effective anti-harassment policy can subject the company to independent liability for illegal harassment in the workplace. Employers are also aware that they can be held vicariously liable for illegal harassment committed by their supervisors. However, many employers are not aware that maintaining effective anti-harassment policies, having adequate complaint procedures and taking prompt remedial action in response to complaints can avoid litigation and provide a safe haven from vicarious liability for alleged supervisory harassment. This protection should serve as motivation for employers to regularly publish an effective anti-harassment policy and complaint procedure and conduct regular anti-harassment training.

As early as 2002, the New Jersey Supreme Court ruled that "if an employer has exercised due care in acting to prevent a . . . discriminatory hostile work

environment, vicarious liability should not attach. The establishment of an effective anti-harassment workplace policy and complaint mechanism evidences an employer's due care and may provide affirmative protection from vicarious liability." *Gaines v. Bellino*. More recently, in *Jorin v. Lidestri Foods, Inc.*, the New Jersey District Court granted summary judgment to the employer for several reasons, including that Lidestri Foods had an effective anti-harassment and complaint procedure and took prompt effective action to investigate the plaintiff's claim of sexual harassment. The court specifically articulated four reasons that the anti-harassment policy was adequate. First, the court found the employer published the anti-harassment policy through the hiring and orientation process. Second, the company provided employees with a "practical and effective" grievance process by which they could report complaints to any supervisor or human resources professional in the company. Third, employees were provided training and review of the anti-harassment policy during orientation. Finally, the company provided supplemental training regarding the anti-harassment policy to supervisors and management employees.

In determining whether the grievance process is "practical and effective," the court will review the specific facts of the investigation at issue. In previously published opinions, courts have acknowledged that having an effective anti-harassment policy prevented liability for supervisory harassment, but have determined it was a question of fact for a jury whether or not an employer had an effective anti-harassment policy. However, the *Jorin* court concluded that there could be no question that the Lidestri Foods anti-harassment policy was adequate because the company commenced its investigation into the plaintiff's complaint the same day it was received and completed the investigation, including interviews of 10 employees, within an eight-day period. Within one day of completing its investigation, a determination was made to terminate the alleged harasser and the termination was implemented immediately. The entire process was completed within 11 days of receiving the plaintiff's

complaint letter. While the "effectiveness" of a complaint procedure is a factual inquiry, a swift and thorough approach to investigating grievances can be found to be adequate as a matter of law and insulate a company against vicarious liability for supervisory harassment.

Therefore, don't delay. Regularly publishing your anti-harassment policy to your employees, training employees regarding the policy and acting swiftly to investigate allegations of harassment can insulate your company from liability against some complaints regarding illegal harassment in the workplace. Please contact our office if you need assistance drafting an anti-harassment policy, recommendations regarding investigation procedures or policies or employee training.

For more information about this alert, please contact Eileen Oakes Muskett at 609.572.2355 or emussett@foxrothschild.com or any member of the firm's Labor & Employment Department.



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