



New Jersey ~Anti-Discrimination & Anti-Sexual Harassment

2.11.2015 On February 11, 2015 the NJ Supreme Court re-affirmed that an employer's defense in a sexual harassment case hinges on the presence of a policy and proper implementation of that policy. The ruling in the case before it (*Aguas vs. State of NJ*) follows NJ's judicial precedent related to sexual harassment cases. In the case, the state's highest court described policy and procedural elements that are essential to create a non-discriminatory workplace.

In its previous rulings, the NJ Supreme Court established (*Lehman vs. Toys R Us, 132 NJ 587, 1993*) that a company may be deemed negligent and vicariously liable for the discriminatory actions of its supervisors where the Company lacks policies, complaint procedures, training for managers and supervisors, monitoring mechanisms and leadership commitment to non-discrimination. A deficiency in the latter areas can open the door for sexual harassment and possible employer claims.

Conversely, a well structured policy can go a long way to prevent discrimination & harassment and capricious suits against an employer. In the *Aguas* case the defending Company had a well structured and administered policy that was clearly communicated to employees and adhered to by managers. *Aguas* was able to argue that the employee failed to follow the established complaint procedure that was clearly communicated in their Employee Handbook under the sexual harassment policy. The court agreed with the defending company.

The presence of a preventative plan (e.g. well structured and clearly communicated Employee Handbook) and a commitment thereto as demonstrated by regular training go a long way to establishing the seriousness of the policy.

The NJ Supreme Court has been clear on this topic in more than a few cases, *Aguas* being the most recent. In July of 2002, the NJ Supreme Court took a similarly strong position in asserting that a sexual harassment policy "must be more than just words" in its *Gaines vs. Bellino* argument. In NJ, anti-harassment is a legal requirement for both large and small employers.

Do not make the mistake of thinking you are covered by the mere establishment of a policy. Anti-harassment is a much more proactive discipline in NJ. NJ Employers should review their current harassment and discrimination policies and make sure their management training is up to date. Policies should clearly indicate what behaviors are offensive and inappropriate and what employees are required to do if they feel they are being harassed or discriminated against.

The Team at McCloskey Partners can assist you in ensuring that your harassment and discrimination policies are well structured and defensible if you find yourself dealing with a harassment or discrimination employee claim. Contact us today to discuss your policy at admin@mccloskeypartners.com or 215-716-3035.