

Harassment: State LAD covers outside business relationships, too

Everyone knows employers can't allow sexual harassment or other forms of unlawful harassment in the workplace. However, in a recent case, a New Jersey appellate court has expanded that principle beyond the traditional employer-employee relationship.

In January, the Superior Court of New Jersey Appellate Division ruled that a sexual harassment lawsuit can be based on one company's "discriminatory refusal to do business" with another company.

Although the New Jersey Law Against Discrimination (LAD) primarily has been applied to sexual harassment claims involving employers and employees, this new decision recognizes that the LAD can also apply to a refusal to engage in business transactions if it is based upon the refusal to comply with requests for sex.

Tires, and a sex shakedown

In *J.T.'s Tire Service, Inc. v. United Rental North America, Inc.*, the plaintiff was a private company that sells commercial and industrial tires. Eileen Totorello is the owner.

J.T.'s Tire Service said that it had been selling tires to United Rental, a national equipment rental company, since 1998. According to the complaint, Harold Hinkes, who was the United Rental branch manager, began to insist that Totorello have sexual relations with him. Totorello also alleged that Hinkes said he would stop buying tires from her company if she did not have sex with him.

When Totorello rejected his advances, Hinkes instructed his branch to stop buying tires from J.T.'s.

Totorello then arranged a lunch with Hinkes and managed to re-establish a business relationship with United. But Hinkes continued trying to initiate a sexual relationship in 2007, and he groped and kissed Totorello without permission. When Totorello again

2 kinds of sexual harassment

- **Quid pro quo harassment** occurs when an employer or its agent expressly or implicitly attempts to make submission to sexual favors a requirement for employment. Under quid pro quo harassment, an employee may perceive that she or he must endure sexual advances or engage in a sexual relationship in order to achieve advancement, maintain employment or avoid adverse employment actions such as demotion or termination.
- **Hostile work environment harassment** occurs when an employee is subjected to offensive, sexual or abusive conduct because of his or her gender. Conduct is deemed hostile, and thus unlawful, when a reasonable person of the employee's gender would conclude that the conditions of employment have been altered and the working environment has become abusive.

made it clear that she wasn't interested in his physical and romantic advances, Hinkes told her that she was making a "very poor business decision."

Subsequently, Hinkes began to delay payments to J.T.'s, and then completely stopped doing business with the company.

J.T.'s and Totorello sued, alleging that Hinkes' actions violated the LAD. But the trial judge dismissed the case, finding that the LAD did not cover Hinkes' and United's alleged actions.

Mocking the goals of the LAD

The Appellate Division reversed, ruling that the complaint could provide the basis for a tenable legal claim.

The decision noted that courts have previously recognized that the LAD prohibits refusals to do business with independent contractors based on age, sex or handicap. The court further noted that the LAD prohibits discriminatory terminations of contracts.

In an earlier case (*Rubin v. Forest S. Chilton, 3rd, Mem'l Hosp., Inc.*) the court concluded that "to distinguish between a refusal to enter into a contract and the termination of a contract where the motivation is illegal discrimination would mock the beneficial goals of the LAD, remedial legislation which should be liberally construed to advance its beneficial purposes."

In the *J.T.'s Tire Service* opinion,

the court reviewed the two types of harassment that are prohibited by the LAD: quid pro quo harassment and hostile work environment harassment (*see box, above*).

'Barrier ... to do business'

Defendants Hinkes and United contended that the LAD does not apply to "discriminatory conduct which arises after companies begin engaging in business transactions and that women business owners do not need protection against sexual harassment by those with whom they do business." The appellate court was not persuaded.

It concluded that sexual harassment is a form of sex discrimination prohibited by the LAD and that Totorello was indeed subjected to quid pro quo sexual harassment, since all elements for that type of harassment were met. The court further stated that "the quid pro quo sexual harassment alleged in the complaint, if legally permitted, would stand as a barrier to women's ability to do business on an equal footing with men."

The *J.T.'s Tire* case serves as a reminder that the LAD applies not only to the employer-employee scenario, but can also reach private conduct between business persons, independent contractors and private merchants.

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