

## **Companies Face Potential Risk for Discriminatory Refusal to Do Business**

Recently, the New Jersey Appellate Division liberally construed the New Jersey Law Against Discrimination (the "Act"), potentially expanding a company's liability for sexual harassment directed towards customers of its business.

In J.T.'s Tire Service v. United Rentals North America, Inc., A-2989, plaintiff alleged that defendant, through its branch manager, subjected plaintiff's sole owner, Eileen Totorello, to *quid pro pro* sexual harassment. Specifically, plaintiff claimed that United ceased doing business with J.T.'s because Ms. Totorello had refused the sexual advances of United's branch manager. Ms. Totorello also asserted that the branch manager "kissed and groped her" against her will, and when she refused his advances, that he told her she was "making a very poor business decision." Following a series of late payments by United, "which previously had been buying \$29,000 worth of tires per month from J.T. [United] ceased doing business with J.T. altogether," plaintiff's complaint alleges.

The appellate court overruled the trial court and reinstated J.T.'s complaint, finding that J.T.'s stated a claim for discriminatory refusal to do business under an infrequently cited provision of the Act that makes it unlawful: "For any person to refuse to buy from, sell to, lease from or to, license, contract with, or trade with, provide goods, services or information to, or otherwise do business with any other person on the basis of ...sex," as well as other protected characteristics such as race, religion and age.

United contended that J.T.'s complaint did not state a claim under the Act because: (1) the Act only prohibited sexual harassment in employment; (2) the facts alleged did not constitute sexual harassment; (3) the Act was inapplicable once companies began engaging in business together; and, (4) women business owners did not need protection against sexual harassment by those with whom they do business. The appellate court rejected all of defendant's contentions.

The court observed that "sexual harassment is a form of sex discrimination that violates" the Act and therefore it had "no hesitation in concluding that *quid pro quo* sexual harassment violates" N.J.S.A. 10:5-12(1). In addition, the court cited one of the basic precepts of the Act, namely that it should be liberally construed to "eradicate the cancer of discrimination" and to achieve the important societal "goal of eliminating invidious discrimination." Finally, the court concluded that if the sexual harassment alleged by the plaintiff was "legally permitted, [it] would stand as a barrier to women's ability to do business on an equal footing with men." Accordingly, the court found that "construing N.J.S.A. 10:5-12(1) to prohibit [the alleged] opprobrious conduct is consistent with the Legislature's intent to eliminate sex discrimination in contracting."



Limited to the context of the lawsuit, the decision merely allowed the plaintiff to continue to pursue claims for violation of the Act. Nevertheless, the court's holding and its reasoning have the potential to have a profound impact on the business landscape in New Jersey. The court's broad interpretation of the Act benefits business customers and creates an expanded risk to business owners. Usually, business owners must be mindful of potential liability under the Act arising from interactions with their own employees. However, this decision serves a reminder that businesses also must be aware of potential liability to customers, and that the actions of their own employees can potentially create legal liabilities to third parties. Moreover, the risk is not limited to situations involving sex discrimination, such as in this case, but can be based on any other statutorily protected characteristic, such as race, religion or age. It is imperative for business owners, managers and other corporate decision-makers to keep this in mind as they undertake contracts and otherwise engage in business transactions with third parties. In addition, management and human resources professionals should be trained on this topic so as to reduce potential liability for the company.

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