

THE FPT NEWS

"... useful information for clients and prospective clients."

© 2006 Fischer Porter & Thomas, P.C.
Attorneys at Law

Spring, 2006
Vol. III, No. 2

THE HIGH PRICE OF EMPLOYMENT

What Our Clients Need to Do to Minimize Expensive Employee Law Suits

Be a Savvy Employer

Employees who work in New Jersey are protected by numerous laws. Given these broad protections, employers must take preventative measures to protect against employee lawsuits. In New Jersey, employers must comply with both federal and state anti-discrimination laws. New Jersey's broad and expansive anti-discrimination law, entitled "New Jersey Law Against Discrimination" (LAD), prohibits discrimination and harassment on the basis of sex, race, creed, national origin, ancestry, nationality, color, marital status, domestic partnership status, sexual orientation, age and handicap.

It is most important to never underestimate the scope of the LAD. Recent case law makes clear the old-style banter containing sexual innuendo and verbal bullying as well as pranks directed at an employee's supposed sex life or sexual orientation violate the LAD. Moreover, the banter does not have to have anything to do with sex when the victim can show the harassment was due to his or her gender. And it makes no difference whether you are running a law firm or a manufacturing business.

Action Required of All Employers

Employers are required to make all possible efforts to prevent harassment and discrimination and promptly remedy any complaints. At a minimum, employers must: (1) train employees in an effort to minimize incidents of sexual harassment and/or other types of harassment and discrimination; (2) implement detailed and effective policies prohibiting harassment and discrimination; (3) set forth a detailed complaint

NEW PARTNER FOR FPT

FPT is pleased to welcome Kirsten Scheurer Branigan as a Partner with the firm. Kirsten was formerly associated with Wilentz, Goldman & Spitzer, one of New Jersey's largest law firms. She will concentrate her practice in employment law and litigation and will be a resident attorney in our Englewood Cliffs office.

We congratulate Kirsten on her becoming President of the New Jersey Women Lawyers Association. She is also Co-Vice President of Corporate Relations of the Essex County chapter of the New Jersey Association of Women Business Owners, and an active member of several other professional groups.

and reporting procedure (which should include assurances of no retaliation for making complaints); and (4) act promptly when made aware of complaints of sexual harassment and/or discrimination, including, performing a thorough, impartial and effective investigation of any employee complaints, as well as engaging in other potential remedial efforts. The bottom line is do something to show you take such complaints seriously. Do NOT ignore or downplay a complaint. In other words, do not prejudge the complaint as being invalid. Mishandling a harassment or discrimination complaint or not conducting a proper investigation can lead to significant exposure for the employer, even if the underlying complaint was not very strong.

The Family Leave Acts

In addition, employers must comply with the

federal and state laws involving family leave and/or medical leave. Employers that have fifty (50) or more employees must comply with both the federal Family & Medical Leave Act and the New Jersey state Family Leave Act. Since these laws contain many strict procedural requirements, employers should have experienced and qualified personnel who can ensure that the employer complies with these laws.

Employee Handbooks

Legal problems also arise from use of an employee handbook that is not properly drafted to comport with New Jersey law. If a handbook contains improper language, an employee can argue that an "implied contract" exists which binds the employer (even where the employer does not expect to be bound by the handbook or considers it to contain merely discretionary policies). Moreover, employers should have their employee handbooks reviewed regularly to ensure compliance with the most current laws.

Keep Good Records

It is very important for employers to have well-documented personnel files. Performance evaluations should be written, thoughtful and candid. The desire to be nice and avoid "hurting someone's feelings" must be avoided when the employee is performing poorly or causing other problems in the workplace. If an employer sued under the LAD, the best way to defend the case is to assert the employee was terminated for "legitimate business reasons" (and not for discriminatory and/or illegal reasons). This defense is almost a sure-fire winner when the employee's personnel file supports the decision and is well-documented.

Wage and Hour Laws

An employer must also know of the numerous record retention obligations required by state and federal law, including the state and federal wage and hour laws. These laws require employers to properly classify workers as either salaried exempt or non-exempt employees. Employers are required to pay non-exempt employees overtime for more than forty (40) hours worked in a workweek. Individual and class action lawsuits and investigations by the Federal and State Departments of Labor are increasing. In fact, claims related to an employer's failure to pay overtime now exceed claims for discrimination and harassment. Deciding whether an employee is exempt or non-exempt requires involves the employer evaluating the employee's salary, administrative and similar responsibilities, and the actual work.

– *Kirsten Scheurer Branigan*

For more information or to learn about our law firm's services and experience, see our website at www.fpmtlaw.com or call telephone number (201) 569-5959 and ask to speak with one of our partners:

Arthur L. "Scott" Porter (aporter@fpmtlaw.com);
 Alan C. Thomas (athomas@fpmtlaw.com);
 Kirsten Scheurer Branigan (kbranigan@fpmtlaw.com)
 Jay D. Fischer (jfischer@fpmtlaw.com).

Our Of Counsel can be reached as follows:
 Howard Davis is Chair of Office of Environment Law (hdavis@fpmtlaw.com).
 Ronald V. DeCaprio (rdecaprio@optonline.net)
 Bart E. Eagle (eaglelaw@mindspring.com)
 Reena Forst (rforst@rflawfirm.com)
 Eddie Raynord Hadden (haddenlaw@aol.com)
 Peter H. Tilem (ptilem@fpmtlaw.com)

Our address in New Jersey is 440 Sylvan Avenue (Route 9W), Suite 130, Englewood Cliffs, NJ 07632-2701.

Fischer Porter & Thomas, a professional corporation, is a multi-service law firm dedicated to providing high quality legal services. We have offices in Bergen County, New Jersey; Rockland and Westchester Counties, New York; and New York City. Our attorneys' experience and ability to handle a broad range of legal matters enables us to offer comprehensive legal assistance to new and existing clients. Visit our web site www.fpmtlaw.com to learn more about us.

THE FPC NEWS and the Fischer Porter & Thomas web site are for informational purposes only, and the information contained on these pages is not offered as legal advice. The material contained should not be considered a recommendation or an offer to perform services. You should not act upon the basis of any information contained on these pages without seeking appropriate legal advice. The content of any e-mail sent to Fischer Porter & Thomas or to any of the firm's attorneys, or any of its employees does not create or constitute an attorney-client relationship between Fischer Porter & Thomas and the sender. The content of any e-mail sent to Fischer Porter & Thomas will not be treated as confidential unless an attorney client relationship is already established. Fischer Porter & Thomas is not responsible for any information provided by a third party that is mentioned on these pages or accessible through the web site, whether provided through links to other web sites or otherwise.

RPC 7.3(b)(5) Required Notices: (1) Before making your choice of attorney, you should give this matter careful thought. The selection of an attorney is an important decision.; (2) If you believe this communication is inaccurate or misleading, report same to the Committee on Attorney Advertising, Hughes Justice Complex, CN 037, Trenton, New Jersey 08625.