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E- ALERT **NJ Employers May Be Liable For Co-Worker Harassment** **Under A Negligence Theory**

In the recent case of *Cerdeira v. Martindale-Hubbell*, (App. Div. Sept. 18, 2008), a female employee was subjected to sexual harassment by a male co-worker for two years. Although Martindale Hubbell distributed a Code of Conduct that discussed a workplace free of harassment and directed employees to speak to a supervisor or a HR representative if they had questions, the plaintiff was silent until 2003, when she finally reported the harassment. An investigation was conducted, the co-worker was suspended and ultimately terminated, and the plaintiff was given four months paid leave.

Two years later, the plaintiff sued Martindale Hubbell, alleging a sexually harassing hostile work environment. Martindale Hubbell argued that the Company could not be held liable for co-worker harassment of which it had no knowledge for two years. The trial court agreed and dismissed plaintiff's complaint. In reversing, the Appellate Court focused on whether the Company's discrimination policy provided a reasonable avenue for employees to voice complaints and whether the absence of such an effective policy causally related to the plaintiff's harm.

The Appellate Court turned to *Lehmann v. Toys R Us*, 132 N.J. 587 (2003), where, in relation to supervisory harassment, the N.J. Supreme Court held that an employer may be liable for negligence if it fails to have in place a well-publicized and enforced anti-harassment policy. The Appellate Court determined that "a negligence based theory of liability arising from an employer's failure to have effective preventative mechanisms in place is not limited to claims of supervisory harassment," it applies to co-worker harassment as well. As such, an employer may be liable for co-worker harassment if the employer fails to provide an effective harassment policy.

As seen by this case, the importance of having an effective anti-harassment policy as well as an enforced complaint procedure cannot be stressed enough. Employers should review their policies and procedures to ensure compliance with *Lehmann* and *Cerdeira*.

For more information about this ruling, contact Leslie A. Lajewski or Steven J. Luckner.

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