

## Client Alert

### **Recent Case Law Further Substantiates the Need for Employers to Implement and Update Anti-Discrimination and Harassment Policies**

February 27, 2015 – The New Jersey Supreme Court’s recent decision in *Aguas v. State of New Jersey* gives employers one more reason to have well-drafted policies against discrimination and harassment that include a clear and precise complaint procedure for employees to report potentially unlawful conduct to their employers. As is the case under federal law, employers faced with a claim under the New Jersey Law Against Discrimination can assert an affirmative defense to avoid liability in connection with a harassment claim based on having a corrective action policy that the employee failed properly to utilize. This case serves as a reminder of the importance of having well-drafted employment policies that cover all forms of discrimination and harassment, and which clearly spell out the appropriate complaint procedure to address any potential violations of those policies.

All employee handbooks should include an anti-discrimination policy and a complaint procedure. To ensure that these policies provide employers with the maximum protection in the face of a lawsuit, employers must ensure that they are well-drafted and regularly updated with the current state of the law. For example, the characteristics that are protected by federal, state and local laws change over time to cover additional characteristics and employee handbooks should be amended to mirror the changes in law before any legal action is taken against them. An employer is unlikely to be able to take advantage of an affirmative defense in a harassment case if its existing policies at the time did not cover the characteristic that forms the basis of that lawsuit.

Equally important is for the complaint procedure to be drafted with clear reporting lines and alternatives for reporting discrimination or harassment claims if the normal chain of command would be inappropriate under particular circumstances. As organizational structures change within a company, the complaint procedures within the policy should be amended to ensure that such procedures and, particularly, those management representatives identified as those to receive and act on complaints, still make sense.

Just as important as it is to have and amend these employment policies, employers must be diligent about adhering to them and administering them in a consistent manner for all employees. Failing consistently to follow your own written policy - and the complaint procedures in particular - can pose liability risks for employers and undermine the affirmative defense that these policies are intended to safeguard.

While an employee handbook will not fend off all employment litigation, having current, effective, and uniformly enforced written policies provide employers with important defenses when facing a claim of harassment.

If you require any additional information on this matter, or any other employment-related issue, please contact:

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