For: LeClairRyan, Newark, N.J.
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EMPLOYERS SHOULD BE VIGILANT ABOUT SEXUAL HARASSMENT BY PARTIES NOT ON THE PAYROLL, WRITES VETERAN LECLAIRRYAN LITIGATOR

--Unusual case highlights the need to respond to alleged harassment by customers, vendors and other non-employees—especially in the retail and hospitality sectors, writes Thomas C. Regan

NEWARK, N.J. (2/25/19) – Employers know to be vigilant about sexual harassment committed by their own employees. But in a new column for *Corporate Compliance Insights*, veteran LeClairRyan litigator Thomas C. Regan highlights the risks associated with a less familiar scenario—alleged harassment by parties not on the payroll.

"Business owners in a broad array of sectors—especially retail and the hospitality industry—need to be aware of the potential risks they may face with respect to sexual harassment of their employees by non-employees," writes the Newark-based Regan, leader of the national law firm's Litigation Department. "The latter group could include customers, vendors, business partners or even government inspectors or other personnel."

In the Jan. 18th column ("Four Takeaways from an Unusual Sexual Harassment Case"), Regan focuses on a recent ruling by the U.S. District Court for the Eastern District of Pennsylvania in the case of *Hewitt v. BS Transportation*.

In court documents, truck driver Carl Hewitt alleges that his supervisor at BS Transportation failed to take prompt remedial action in response to sexual harassment of Hewitt by a male worker at a fuel distribution company's refinery. The driver, Regan explains, alleges that the harassment started in 2014 with sexual comments and hand gestures made "at least once or twice a week" by refinery employee Anthony Perillo. He also claims that Perillo's supervisor and other refinery employees knew of this behavior but did nothing to stop it.

"After having 'begged' Perillo to stop making such remarks, Hewitt alleges that Perillo took even more aggressive actions," Regan writes. "Hewitt claims his manager at BS Transportation promised to 'make a report' and 'take care of it' but never told the fuel distribution company about the alleged behavior or investigated it. The plaintiff further claims his manager asked him to stay quiet about the allegations—and fired Hewitt when he brought them up again."

This past January, U.S. District Judge Jan E. DuBois issued a ruling allowing Hewitt's case against BS Transportation to proceed. While the issue of sexual harassment by non-employees is unresolved in the U.S. Court of Appeals for the Third Circuit, the judge noted, other district courts in the third circuit have ruled that an employer may be held liable "where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action."

In the column, Regan provides employers with four takeaways from the *Hewitt* case: stay updated on the law; check your policies; question your assumptions; and treat all employees equally. He describes the role of state and federal statutes in such cases; underscores the need for company policies to reflect the risks associated with harassing behavior by non-employees; emphasizes the need for a proactive response even to situations that appear to fall outside of typical patterns; and hammers home why employers should never ignore such behavior based on the perceived value of a "big customer."

Unfortunately, Regan writes, even taking action against non-employee harassers is not, in itself, risk free. "My office once represented a major retailer in Pennsylvania that had received threats of

litigation from a sexually harassing customer it had—quite properly and proactively—banned from the store," he relates. "The alleged harasser slinked off and never filed any legal action, but the matter shows how your response must be carefully considered every step of the way."

The full article is available at: https://www.corporatecomplianceinsights.com/4-takeaways-from-an-unusual-sexual-harassment-case/

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