

## LEGISLATIVE UPDATE

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### **SEXUAL HARASSMENT PROTECTIONS EXTEND BEYOND THE EMPLOYMENT RELATIONSHIP**

In a recent decision, J.T.'s Tire Service, Inc. v. United Rentals of North America, Inc., a New Jersey Court held that the New Jersey Law Against Discrimination's ("NJLAD") anti-harassment provisions extend beyond the employment relationship. While prior cases explained the NJLAD prohibited discrimination in the form of refusals to do business with a person because of a protected characteristic (e.g., race, age, sex, religion, etc.), the decision marks the first time a New Jersey Court has extended the anti-harassment provisions of the NJLAD outside the employment context.

In J.T.'s Tire Service, the plaintiff, a female and sole owner of her tire service company, had a long-standing business relationship with the New Jersey branch of United Rentals ("defendant"), a national equipment rental company. Approximately seven (7) years into the business relationship, the defendant's branch manager pressured the plaintiff to have a sexual relationship with him. The plaintiff refused and, as a result, the defendant ceased buying tires from the plaintiff. The plaintiff later went to lunch with the branch manager and the business relationship resumed.

In 2007, the branch manager allegedly became more persistent with the plaintiff and told her that declining his sexual advances would be "a very poor business decision." In November, the defendant allegedly delayed payments to plaintiff. By December 2007, the defendant allegedly ceased doing business with the plaintiff.

The plaintiff filed suit claiming the defendant discriminated against her on the basis of sex in violation of the NJLAD. In particular, the plaintiff sued pursuant to N.J.S.A. §10:5-12(l) which prohibits discriminatory refusals to do business on the basis of certain protected characteristics, e.g., sex. The statute does not, on its face, prohibit sexual harassment outside the employment context.

The defendant argued that sexual harassment is not prohibited sex discrimination under N.J.S.A. § 10:5-12(l). The lower court dismissed the plaintiff's complaint on those grounds but the appellate court overruled the decision. The court held that where the harassment "consists of sexual overtures and unwelcome touching or groping, it is presumed that the conduct was committed because of the victim's sex." Accordingly, the court reason that the NJLAD prohibits sexual harassment in a business relationship outside the employment context.

Practically, most employers already maintain policies that prohibit all forms of harassment and discrimination regardless of the relationship, e.g., employment, independent contractor, etc. Human Resources representatives should seriously consider amending their policy language to make it broad enough to cover relationships with vendors and business partners. Employers may also explore the possibility of distributing a discrimination/harassment statement to vendors and business partners to potentially take advantage of the "safe harbor" defense afforded employers under New Jersey Law.