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Richard (Dick) Clark likes to get involved. A native of upstate New York, Dick credits his parents for his participation in the community. "My father was always involved in community projects and my mother was a teacher who imparted in me the joy of learning and the rewards of helping others." Dick was the first municipal public defender in Sussex County, Assistant Prosecutor and Assistant County Counsel and currently represents three municipalities and three land use boards. He has been president of the Sussex County Chamber of Commerce, Newton Rotary Club and is currently an officer at Newton Memorial Hospital.



Protect the Name of
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Cases of Note

Dick's practice focuses on three areas: zoning and land use, trust and estate planning, and corporate commercial law. He is a frequent speaker at the League of Municipalities and the New Jersey Planners Association and Rutgers University addressing land use and governmental issues. Dick is often quoted in the media as he was last summer when he was interviewed on television regarding builders impact fees. Yet, because of the economy and the business community of northern Jersey, most recently it is in the corporate and estate planning areas where his energies have been called upon.

How do estate planning and corporate law intersect? The quick answer is "business succession planning", a legal term of art that describes the estate and business planning an owner does to schedule an orderly exit or retirement from the business. "A good time to start doing this planning is when you are in your early 50's," notes Dick, "because you want to have time to plan and consider who should take over without having a sense of urgency."

There are many issues to consider in business succession. If the owner decides that a family member will take over the business, it is necessary to plan for the transfer of shares and control during the owner's lifetime. This time period before the exit of the owner allows for the family member to establish the control and leadership of the business so that its profitable future is secured.

If a non-family member, such as a key employee, were to take over the management of the business, additional considerations are necessary. “You want to establish a long term employment contract so that the key employee does not become a competitor,” and, notes Dick, “Included with that is the issue of compensation.”

The economy has also driven small to mid-size business owners to consider selling their enterprises to stave off having to compete against large multi-national corporations as competitors, or buying their competitors to consolidate a market position. Timing is critical: “It takes 2 to 3 years for a suitable buyer to be found so that the business owner gets the best return. You don’t want to do this under duress.” The due diligence process — evaluating employee files, locating missing stock, valuing the assets — takes time for both buyer and seller.

Spare time pursuits include golf and reading. Dick is a graduate of the University of Notre Dame, and received his law degree from the State University of New York at Buffalo. He is a trustee of the NJ State Bar Land Use Section and a member of the NJ Institute of Municipal Attorneys and NJ Planning Officials. Dick and his wife, Barbara, have three children aged 25, 21 and 18, and reside in Sparta Township.

Employer Liability for Harassment in the Workplace By LeeAnn Pounds, Esq.



Several years ago the courts and the media inundated America with different accounts as to what can be considered “sexual harassment” and what a business can do to prevent it in the workplace. Business owners, managers and supervisors soon learned that gestures, jokes and comments of a sexual nature, even when made by co-workers and not management, can be considered sexual harassment under certain circumstances where they contribute to, or create, a hostile work environment. Likewise, the abuse of managerial authority, by requiring sexual favors in exchange for a raise, promotion, or to prevent a demotion or undesirable transfer or assignment, clearly creates sexual harassment for which a business can be held strictly liable.

In recent years the New Jersey and Federal Courts have increasingly recognized that employees can bring lawsuits claiming that management and/or co-workers created a hostile work environment based not just on sexual conduct, but also harassing conduct related to the employee’s race, age, handicap, ethnic origin, religion and other protected categories, including sexual orientation, marital status, or even being a parent. New Jersey law now recognizes claims against an employer for harassment of an employee by a vendor, customer or other individuals on company property.

Fortunately, courts have also begun to provide companies protection from legal responsibility for harassing acts by a rogue supervisor or co-employee if a business has implemented certain protective measures in an effort to prevent such conduct.

Protective Measures

The New Jersey Supreme Court has recognized that “providing employers with the incentive not only to provide voluntary compliance programs but also to insist on the effective enforcement of their programs will do much to ensure that hostile work environment discrimination claims disappear from the workplace and the courts.”¹ More recently, the Court stated that “[a] company that develops policies reflecting a lack of tolerance for harassment will have less concern about hostile work environment or punitive damage claims if its good-faith attempts include:

1. Periodic publication to workers of the employer’s anti-harassment policy;
2. An effective and practical grievance process;
3. Training sessions for workers, supervisors, and managers about how to recognize and eradicate unlawful harassment.”²

Develop a Policy and Complaint Procedure

The first step is to develop a comprehensive policy prohibiting harassment that provides a clear procedure for reporting complaints of harassment, describes examples of the type of conduct that constitutes harassment and clearly states that harassment will not be permitted. Laddey, Clark & Ryan provides assistance to clients in preparing such policies or reviewing existing policies to identify necessary changes.

Publicize the Policy

After developing an anti-harassment policy and reporting procedure, the business must make vigilant efforts to publicize this policy. This is done by posting the policy in various places at the work site, including it in the employee handbook and by having employees review the policy and also sign a receipt acknowledging their receiving of the policy.

Training and Investigation

All supervisors and managers should receive training on the identification of harassment in the workplace, the proper manner of handling complaints, and procedures for conducting thorough investigations. An individual, and at least one alternate in the organization, must be responsible for overseeing that all complaints of harassment are documented and investigated fully in the manner prescribed by the adopted policy. All allegations of harassment should be thoroughly and discreetly investigated. Document the investigation. If harassment occurred, take the appropriate action to ensure it has stopped and does not reoccur.

An Ounce of Prevention

While all of these steps may sound like a lot of trouble and administrative red tape, they do provide an effective shield against liability for harassment and should prevent and reduce harassment incidents in the workplace. Prevention is a truly valuable asset when compared with the expense and disruption of litigation.

LeeAnn Pounds is an associate in the firm's Employment and Labor Department. LeeAnn can be reached at lpounds@lclaw.com or by phone at (973) 729-1880.

1. Lehmann v. Toys R Us, Inc., 132 N.J. 587, 625 (N.J. 1993).
2. Cavuoti v. New Jersey Transit Corp., 161 N.J. 107 (1999)

Protect the Name of Your Business **By Angelo Bolcato, Esq.**

You have incorporated your business and found just the right name. Two years later you receive a 'cease and desist' letter telling you to stop using that name because another business already 'owns' it. Or worse, the letter may offer to sell you the name you already use.



A business name is a valuable piece of intellectual property. Building a good name bespeaks your reputation in the business and thus has worth to you, to your customers, and to your prospective customers. Many business owners believe that having formed a corporation or LLC protects the name of their business, making it their property and keeping others from using that name. The mere filing as a corporation or LLC does not protect the name; filing only means that no one else in the state is using the name.

State and Federal Name Protection

To protect a business name one should take the step of exploring state and federal name protection. You can protect the business name and a trade or service mark, as well as the URL of your web site. Your lawyer can provide you with a report listing the status of any registered state or federal uses of a name. This report will also list any common law uses, which, while not registered, may have rights to the name based on prior use.

Consider where your business will operate. If the business is to operate only in New Jersey, with no plan to operate in other states, registering the name in New Jersey may be all that is needed. If the business will operate outside of the state, serious consideration should be given to registering not only in New Jersey, but also with the United States Patent and Trademark Office. (www.uspto.org). Federal registration will protect your name nationwide. If your name includes a logo or design, it too can and should be registered. A distinctive logo will not only give your

organization name recognition, but will also distinguish your name from others with similar names operating in different business fields.

To register in New Jersey, an application along with three samples of the name or mark as actually used by the business are submitted to the Secretary of State's office. You can send letterhead or business cards as samples. If there are no other registered users, the application is typically approved within three months.

Federal registration also requires the submission of an application and copies of the mark as used in interstate commerce. The application is assigned to a reviewing attorney at the U.S. Patent and Trademark Office and the process may take more than one year. If there are no similar uses the mark is published in the Official Gazette. If no opposition is filed a certificate of registration is issued.

Clearly, a name is worth a lot. Business name protection should be addressed with your lawyer. If you would like to discuss your specific business name or other business issues, please feel free to call or e-mail Angelo Bolcato, abolcato@lclaw.com.

Cases of Note

Auto Accident Settlement Yields \$850,000 for Plaintiff

Partner Brian Laddey recently settled this case on behalf of a 17-year-old passenger who was severely injured in an automobile accident. The accident involved a head-on collision between two vehicles. The drivers of each vehicle claimed that the other driver was in their lane at the time of impact. Suit was instituted and as a result of extensive investigation and discovery, the insurance carriers for each vehicle agreed to share equally in the settlement. Had the insurance carriers not so agreed, there would have been insufficient insurance proceeds available to fully compensate our client.

Perceived Handicap Discrimination

What acts by employers actually create a hostile work environment constituting harassment? Are rumors or a perception by the employee that he or she has been labeled as "anorexic" enough? Partner Thomas Ryan and associate LeeAnn Pounds successfully defended a nursing home and supervisory personnel against claims of harassment and emotional distress brought by a former employee who claimed that supervisors had labeled her with the perceived handicap of anorexia. The court disagreed, dismissing all claims against the employer and saying that the events described as "harassment" must have a clear connection to a perceived handicap. Supervisory discipline and referring an employee to an employee assistance program, among other acts, did not have such a connection. This decision was reported in the New Jersey Employment Law Reporter.

Workplace Injury Settles for \$765,000

A 25 year old woman sustained a crush injury to her right had and lost two fingers while using a 22 ton power press. Partners Brian Laddey and Andrew Fraser successfully brought this case against the manufacturer and three distributors of the press, a joint venture group that prior to trial had offered \$35,000. Expert engineering testimony showed that the press was defective due to the removal of 2 hand palm controls. The structured settlement will pay the plaintiff approximately \$1.2 million over 20 years.

Lawsuit Against NJ Successful in Death of Woman

Suing the state successfully is extremely difficult. Andrew Fraser brought this case under the NJ Tort Claims Act against the NJ Department of Transportation claiming gross negligence in the maintenance of Rt. 206 in Roxbury where icy conditions caused the motor vehicle accident that killed a 44 year old mother of 3 children. Evidence showed that an underground water source, known to the DOT for more than 1 year, caused a water and ice condition. The plaintiff lost control of her vehicle on the ice and was hit by an oncoming pick up truck. Although the State argued that efforts to correct the problem were aggravated by weather conditions, the State settled after four days of trial.

Planning Boards Warned about Informal Hearings

A decision by a Monmouth County Judge warns all local planning and zoning boards that informal reviews of a development application without proper notice may result in the board's subsequent approval being overturned. In *Stewart v. Planning Board of the Township of Manalapan*, the court vacated a site plan approval because the board held a post application workshop meeting with the developer without providing the notice required by the Municipal Land Use Law. Mike Garofalo points out that the Stewart ruling warns all boards that informal application review, even for the purpose of streamlining the application process, should be conducted within the parameters of the Municipal Land Use Law. Garofalo further cautions that post-application reviews, preapplication reviews and on-site reviews are self created practices that will come under scrutiny in light of the Stewart decision.

Results in any one case cannot be guaranteed. Results will vary from case to case based on particular facts and circumstances.

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