



LABOR & EMPLOYMENT DEPARTMENT

ALERT

DEMANDS FOR SEX IN EXCHANGE FOR DOING BUSINESS DEEMED TO VIOLATE THE NJLAD

by Matthew R. Porio

A New Jersey appellate court recently ruled that attempting to extort sexual favors in exchange for placing sales orders with another business is quid pro quo sexual harassment that violates section 12(1) of the New Jersey Law Against Discrimination (LAD), which prohibits sex discrimination in business transactions.

In *J.T.'s Tire Service, Inc. v. United Rentals North America*, the plaintiff company and owner, Eileen Totorello, argued that a branch manager at United Rentals North America attempted to “extort sexual favors” from her as a condition of continuing to do business with Totorello’s company. In the complaint, the plaintiff contended that the branch manager, Harold Hinkes, began pressuring Totorello to have a sexual relationship with him in 2005. When she refused, the branch stopped buying tires from Totorello’s company, resuming only when Totorello agreed to have lunch with him. However, Hinkes would withhold business when his periodic sexual advances were declined, and became more persistent in late 2007, eventually kissing and groping Totorello against her will. By November 2007, Hinkes was delaying payments to the plaintiff company, and in December 2007, United – which had been purchasing \$29,000 worth of tires per month from J.T.’s Tire Service – ceased doing business with the company.

The Appellate Division reversed and remanded a trial court decision holding that United Rentals had not engaged in discriminatory conduct pursuant to the plaintiff’s LAD complaints for sex discrimination and retaliation.

In doing so, the Appellate Division stated that the LAD prohibits any person from refusing to “buy from,” “contract with” or “otherwise do business with any other person on the basis of” sex. N.J.S.A. 10:5-12(1). The court further noted that previous New Jersey jurisprudence has established that the LAD prohibits both “refusals to do business with independent contractors based on age, sex, or handicap” and discrimination-based contract terminations. Moreover, while the LAD does not specifically prohibit sexual harassment, sexual harassment is clearly “a form of sex discrimination that violates both Title VII and the LAD.” (citing *Lehmann v. Toys ‘R’ Us, Inc.*, 132 N.J. 587, 601 (1993)).

The defendant had argued that “sexual harassment is prohibited only in employment. . . and is not sex discrimination under subsection 12(1);” that subsection 12(1) does not apply “after companies begin engaging in business transactions;” and that women business owners do not require protection from sexual harassment.

The court, however, found these arguments meritless, stating, “We have no hesitation in concluding that quid pro quo sexual harassment violates subsection (1) of the LAD.” To hold otherwise, the court stated, “would stand as a barrier to women’s ability to do business on an equal footing with men.”

For more information, please contact Matthew R. Porio at 973.994.7810 or mporio@foxrothschild.com or any member of the [Labor & Employment Department](#).

Attorney Advertisement

© 2010 Fox Rothschild LLP. All rights reserved. This publication is intended for general information purposes only. It does not constitute legal advice. The reader should consult with knowledgeable legal counsel to determine how applicable laws apply to specific facts and situations. This publication is based on the most current information at the time it was written. Since it is possible that the laws or other circumstances may have changed since publication, please call us to discuss any action you may be considering as a result of reading this publication.