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HOW TO AVOID A HOSTILE WORK ENVIRONMENT

More and more employees are suing school districts for sex discrimination on the theory of a hostile work environment. As the following article demonstrates, schools can take relatively easy and proactive measures to better avoid such claims.

To succeed on a claim of a hostile work environment based on sex, an employee must show the convergence of five (5) elements:

- 1) The employee suffered intentional discrimination because of his/her sex;
- 2) The discrimination was pervasive and regular;
- 3) The discrimination detrimentally affected the employee;
- 4) The discrimination would detrimentally affect a reasonable person; and

5) The employer should be held liable for the acts of its employees under the theory of respondeat superior.

In other words, in order to be found liable on a hostile work environment claim, the above elements require the workplace be permeated with discriminatory intimidation, ridicule and insult sufficiently severe or persuasive so as to alter positions of employment. In deciding hostile work environment claims, the Court looks at the frequency of the conduct, and severity, whether it is physically threatening or merely offensive, and whether it reasonably interferes with any employee's work performance. For example, Courts have rejected hostile work environment claims based upon "stray" remarks or sporadic incidents and have noted that claims cannot be sustained when co-workers merely give the employee a "cold shoulder."

A school district will become liable for a hostile work environment if it turns a "blind eye" towards the allegations of discrimination and/or harassment. Accordingly, to avoid a claim of hostile work environment, schools should take all internal complaints of harassment and/or discrimination very seriously. Schools should make it a practice to investigate any and all claims brought forth by an employee alleging harassment and/or discrimination and to address such claims when substantiated by an investigation. A pro-active policy of investigation and implementation of corrective measures is always the best policy. Although the law does not require school districts to ensure that all employees like each other, the law does require that school districts make an attempt to create an environment in which discrimination and harassment is not a constant and regular occurrence. In sum, a claim of hostile work environment easily can be prevented simply by being responsive to the alleged problems.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.