

Start the New Year Right Review Your Workplace Policies and Procedures

It's been over 30 years since the United States Supreme Court determined in *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986) that sexual harassment constitutes unlawful discrimination under Title VII of the Civil Rights Act of 1964. Yet, a significant lesson that we learned in 2017 is that sexual harassment is a pervasive issue, including in the workplace. In fact, U.S. Supreme Court Chief Justice Roberts recently announced that "[t]he judiciary will begin 2018 by undertaking a careful evaluation of whether its standards of conduct and its procedures for investigating and correcting inappropriate behavior are adequate to ensure an exemplary workplace for every judge and every court employee;" this, after a prominent federal judge was accused of sexual misconduct in early December.

As Wegman Law moves forward in 2018, we are encouraging our clients to evaluate their workplace policies and procedures and make any necessary modifications to ensure an exemplary workplace. An appropriate, actively implemented, and effective sexual harassment policy is instrumental in achieving this goal and may protect your company in a situation involving alleged sexual harassment, including allegations of harassment by supervisors and co-workers.

Under both Ohio law and federal law, an employer is held to be strictly liable for its supervisor's sexually harassing conduct if such conduct results in "tangible employment action" which means "a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits" against the aggrieved employee, even if the employer did not know about the harassment. *Edwards v. Ohio Inst. of Cardiac Care*, 170 Ohio App. 3d 619, 2007-Ohio-1333, 868 N.E.2d 721, ¶120 (2nd Dist.) (quoting *Burlington Indus. v. Ellerth*, 524 U.S. 742, 761 (1998)). However, if the harassment did not result in a "tangible employment action," an affirmative defense known as the "Faragher/Ellerth" defense may be available to the employer. *Id.* at ¶121; *Faragher v. City of Boca Raton*, 524 U.S. 775, 807 (1998); *Ellerth*, 524 U.S. at 765.

The Faragher/Ellerth defense requires: (1) "that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior;" and (2) "that the plaintiff/employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise." *Faragher*, 524 U.S. at 807. Importantly, if an employer has a sexual harassment policy in place that is readily accessible, actively implemented and "[i]s effective in practice in reasonably preventing and correcting any harassing behavior," then the employer may meet the first element of the defense. *Edwards* at ¶139 (quoting *Clark v. United Parcel Serv., Inc.*, 400 F.3d 341, 349 (6th

*Cir.*2005); *Ellis v. Jungle Jim's Mkt., Inc.*, 2015-Ohio-4226, 44 N.E.3d 1034, ¶¶36-43). Having an appropriate, actively implemented and effective sexual harassment policy in place can offer protection to an employer if faced with a claim of sexual harassment by a supervisor if "tangible employment action" was not taken against the employee.

Further, in cases where a co-worker, as opposed to a supervisor, is alleged to have sexually harassed another employee, an employer is liable "when [it] knew or should have known of the charged sexual harassment and failed to implement prompt and appropriate action." *Peterson v. Buckeye Steel Casings*, 133 Ohio App. 3d 715, 724, 729 N.E.2d 813 (1999) (citing *Blankenship v. Parke Care Ctrs., Inc.*, 123 F.3d 868, 872-873 (6th Cir. 1997)). Again, an effective sexual harassment policy provides an employer with a measure of protection if faced with such a claim. First and foremost, such a policy will hopefully prevent or at least limit the harassment or abuse and second, having and enforcing such a policy will provide the employer with a defense against such claims.

If you would like to learn more about this topic or if you have questions about your workplace policies and procedures, please contact Sarah Nemastil at SANemastil@wegmanlaw.com or Christopher Holecek at CAHolecek@wegmanlaw.com.



Attorney Spotlight Jason A. Worgull

Jason A. Worgull is the head of the Intellectual Property Department at Wegman Law. Jason assists both domestic and global companies secure, protect and defend their intellectual property rights. He specializes in patent and trademark prosecution and counseling clients on day-to-day business, including patent and trademark validity, infringement, right-to-use opinions and licensing matters. Jason handles patent matters for a wide range of technologies in the electrical, mechanical, electro-mechanical and software arts, including the following technology areas:

- Medical devices
- Medical imaging technologies, including magnetic resonance imaging and x-ray and computed tomography scanners
- Optical coherence tomography (OCT) technology
- Liquid crystal display (LCD) technology
- Consumer electronics
- Telecommunications technology
- Vehicle and trailer control systems
- Hydraulic systems
- Semiconductor devices for high-speed computer processors and flash memory assemblies
- Manufacturing techniques for a wide variety of semiconductor devices and nano-devices

Jason also assists clients in all aspects of trademark law, including filing and prosecution of trademark applications, Trademark Trial and Appeal Board (TTAB) practice, including oppositions and cancellations, and counseling clients and preparing trademark opinions.

Jason can be reached at jaworgull@wegmanlaw.com

Notable News

We are pleased to announce that effective January 1, 2018, **Peter A. Hessler** began serving as the Managing Partner of Wegman Law and **Angela M. Lavin** became the General Counsel of Wegman Law. As of January 1, 2018, **Keith A. Vanderburg** stepped aside as Wegman Law's Managing Partner and we would like to take this opportunity to congratulate and thank Keith for his long and successful leadership of Wegman Law. Keith will continue as a partner on a full-time basis and serves on our Board of Directors.

Christopher A. Holecek and **Angela M. Lavin** have been nominated as Ohio Super Lawyers. Each year, no more than five percent of the lawyers in the State are selected by the research team at Super Lawyers to receive this honor.

Sarah A. Nemastil and **Jessica L. MacKeigan** have been selected as Ohio Rising Stars. Each year, no more than 2.5 percent of the lawyers in the State are selected by the research team at Super Lawyers to receive this honor.

Peter A. Hessler and **Tanja M. Holecek** have been recognized as "Best Lawyers," an organization that recognizes leading lawyers based entirely on peer review.

Michelle Fabry has joined Wegman Law as an associate in our Intellectual Property Department. Michelle is a 2016 graduate of The University of Akron School of Law, and practices intellectual property law, focusing on patent preparation and prosecution, patentability searching and analysis, as well as trademark procurement.

Lawrence S. Crowther serves as Chairman of the International Law Section of the Cleveland Metropolitan Bar Association. The CMBA ILS presented several important programs and seminars in 2017, including "Impact of India's New Law – GST in M&A Deals", "What is the Future of NAFTA – the North American Free Trade Agreement," and "Doing Business Internationally: Why You Need to Know Your Business Partner."

Wegman Law employees raised over \$600 and collected 15 boxes of food and supplies benefitting the Parma Hunger Center in their annual food drive. Our employees also collected 4 boxes of toys for the annual Toys for Tots Program. In addition, in 2017, our employees raised over \$1,400 for the Alzheimer's Association.

LUNCH AND LEARN WITH WEGMAN LAW

As part of the firm's continuing commitment to our clients, Wegman Law has created a complimentary lunch & learn program. Our attorneys will come to your offices to provide **free lunchtime programs** to your team and Wegman Law will provide lunch. Our complimentary programs address current legal trends and hot topics in the law, including:

- Harassment/Discrimination
- Cybersecurity & Data Privacy
- Negligent hiring, retention and supervision
- Family Medical Leave
- Workplace investigations
- Trade Secrets, IP and Protection of IP
- Family Law



For more information, or to schedule a Lunch & Learn, please contact **Angela M. Lavin, Esq.** at (216) 642-3342 or amlavin@wegmanlaw.com