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INFORMATION MEMO
LABOR AND EMPLOYMENT LAW

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New York Appellate Court Confirms the Expansive Scope of the New York City Anti-Harassment Law

A recent decision from the New York Appellate Division is a clarion call to employers in New York City of the legal risks they face for workplace harassment claims and the need for diligence in their harassment training and prevention.

In *Suri v. Grey Global Group, Inc.*, the plaintiff was employed in the IT department of an advertising agency. Her sexual harassment claim hinged on three simple allegations: on separate occasions, her supervisor allegedly told her that she had "beautiful hair," and complimented her boots; and, while seated at a meeting, her supervisor allegedly placed his hand on and squeezed her thigh near her knee for "a second or two." The supervisor was not alleged to have made any other comments or actions of a sexual nature at any other time or in any subsequent interaction with the plaintiff or other employees. The plaintiff, however, alleged that she interpreted the physical contact as an implicit sexual advance, in light of the prior comments about her hair and boots. Plaintiff also alleged that while she spoke to friends about the incidents, she did not make any contemporaneous response to the supervisor or complain to anyone in the company about the supervisor's alleged conduct.

According to the plaintiff, her supervisor "made [her] life at [work] miserable" over the following eighteen months by dismissing her contributions at work; talking over her; belittling her in front of other employees; cutting her out of meetings; withholding resources; arbitrarily assigning or relieving her from projects; and "put[ting] his hand in her face when she was talking."

Plaintiff asserted several claims, including claims for hostile work environment sexual harassment under the New York City Human Rights Law ("NYCHRL") and the New York State Human Rights Law. The appellate court held that plaintiff's allegations were sufficient to place the NYCHRL dispute before a jury and reversed the trial court's decision granting summary judgment to the company on that claim. Significantly, the court acknowledged that the NYCHRL provides more expansive protection against sexual harassment than either the corresponding federal law (Title VII) or the State Human Rights Law. (The court upheld dismissal of the hostile work environment claim under State law). In particular, under the NYCHRL, a plaintiff need only show that "she was treated less well than other employees because of her gender." A showing of "severe or pervasive conduct" is not required, because the NYCHRL was designed to "meld the broadest vision of social justice with the strongest law enforcement deterrent."

Here, the court interpreted the above allegations as sufficient to show "that [plaintiff's supervisor] used his position to implicitly demand sexual favors, and, when she rebuffed him, to explicitly make her life miserable for the next 18 months."

This decision must be concerning for NYC employers. The court's willingness to accept the plaintiff's subjective interpretation of the supervisor's actions and treat them as a "demand for sexual favors" vastly expands the potential for litigation. As Justice Kahn recognized in her dissent, the law is not a civility code or a vehicle to correct petty slights or trivial inconveniences. Second, if plaintiff's failure to react or complain to the employer is sufficient to establish that she "rebuffed" the "sexual advances," any compliment, innuendo, or passing physical contact between employees is effectively transformed into a potential unwelcome sexual advance. Further, with a "bad" supervisor who "treated all of his direct reports in the same [uncivil] way," it is difficult to accept the court's finding of a sufficient nexus to show that

plaintiff was treated less well than other employees because of her gender. In total, the conclusion that comments and actions, such as alleged in this case, could impose vicarious liability on the employer creates a nearly impossible burden on NYC employers to manage the daily interaction among employees.

To meet that burden and to comply with new and revised State and New York City regulations on preventing sexual harassment, NYC employers are required to revise their harassment policies, train all employees, and promptly respond to harassment complaints. Additional strategies and management training to identify potential interpersonal problems among employees and those supervisors and managers who create a potential risk of harassment liability may also be warranted in light of the obligations now imposed on employers under the NYCHRL.

If you have any questions about this Information Memo, please contact Thomas G. Eron, Kaveh Dabashi, any of the attorneys in our Labor and Employment Law Practice, or the attorney in the firm with whom you are regularly in contact.

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