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SZAFERMAN LAKIND SUCCESSFULLY ARGUES WORKPLACE SEXUAL HARASSMENT AND DISCRIMINATION CASE TO APPELLATE COURT



[Nathan Edelstein, Esq.](#)
Partner
Szaferman Lakind

Lawrenceville, NJ ~ Tuesday, May 19, 2015: The Appellate Division reversed and vacated the decision of the Civil Service Commission denying a hearing for a complainant in a sexual discrimination and hostile work environment case brought against the Department of Human Services (DHS). The court remanded the matter for a hearing in the Office of Administrative Law.

The complainant, a psychologist at a State of New Jersey psychiatric facility, represented by [Nathan M. Edelstein](#), a partner at the firm of [Szaferman, Lakind, Blumstein & Blader P.C.](#), filed an administrative complaint alleging that she had been subjected to violations of the State Policy Prohibiting Discrimination in the Workplace (State Policy), and unlawful retaliation against her for having filed the complaint. The alleged harassment and discrimination by her supervisor included unwanted touching, being “knocked out of the way,” having charts “grabbed” away from her, belittling and rude comments, and pervasive discrimination against female staff. After the complaint was filed, DHS allegedly retaliated by threatening a position transfer, giving a bad performance evaluation after twenty-seven years of good performance reviews, denying complainant’s request for vacation time and charging that she violated time rules.

The Equal Employment Office (“EEO”) office in DHS investigated the complaint and found it unsubstantiated as not “corroborated.” The case was appealed to Civil Service, which affirmed the DHS finding that there were no material issues of disputed fact and that the complaint “could be rejected without a hearing because factual allegations were not corroborated.”

On appeal, the Appellate Division reversed and vacated the Civil Service decision and remanded the case for a hearing. The Appellate Court noted that the State Policy calls for a hearing if factual allegations raise material and controlling disputes of fact; it does not require they also be corroborated. If corroboration were a requirement for a hearing, any state agency could avoid a hearing and liability where only the complainant witnessed the policy violations. Corroboration is relevant to determine credibility, but credibility should be determined at a hearing.

Thus, on May 12, 2015, the Appellate Court reversed the order of Civil Service and remanded the matter for a hearing.

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