

Individual Employee Liability Under the Law Against Discrimination

04/30/18

Employers know that they can be liable for discrimination under the New Jersey Law Against Discrimination (“LAD”), but many do not know that the LAD provides for individual liability for supervisors aiding and abetting discrimination.

The LAD states that it is unlawful “[f]or any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden [under the LAD].” As such, an employer and supporting employees can be liable under the LAD.

To hold an individual employee liable under this provision of the LAD, a plaintiff must show that: 1) the defendant employee aided a party who performed a wrongful act, which caused injury; (2) the defendant employee was aware of his role in the overall activity when he provided the assistance; and (3) the defendant employee knowingly and substantially assisted the violation. To determine whether the defendant employee “substantially assisted” the principle violation, courts weigh five factors: 1) the nature of the act encouraged, (2) the amount of assistance given by the supervisor, (3) whether the supervisor was present at the time of the asserted harassment, (4) the supervisor's relations to the other, and (5) the state of mind of the supervisor.

The potential for individual claims against supervisors, makes it even more important for employers to train their employees regarding discrimination, and also to have a separate training geared to supervisors so that they understand the important accountability and other provisions of the LAD.

TAKEAWAY: Employers should review their records to ensure they are providing training for both staff and supervisors on discrimination.

Attorney

- Tracy Armstrong