

MAY 2019 NEWSLETTER

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RECENT EASTERN DISTRICT OF PENNSYLVANIA RULING FINDS THAT AN EMPLOYER MAY BE SUED OVER SEXUAL HARASSMENT BY A NON-EMPLOYEE

FIRM ANNOUNCEMENTS

A. AWARDS

Pozzuolo Rodden, P.C. is pleased to announce that Joseph R. Pozzuolo was awarded The America's Most Honored Professional 2019-Top 1% by the American Registry. The American Registry was selected to be the official and authorized recognition partner for some of America's most trusted professional organizations at identifying business excellence. These organizations rigorously gather up peer review ratings, client reviews, industry analysis to ultimately uncover the best of the best professionals in the business. For 2019 the American Registry proudly announced that Joseph R. Pozzuolo is one of America's Most Honored.

Pozzuolo Rodden, P.C. is pleased to announce that Joseph R. Pozzuolo has been named a 2019 Lifetime Achievement Award recipient. Less than 5% of Marquis Who's Who listees are selected for this honor.

Pozzuolo Rodden, P.C. is pleased to announce that Joseph R. Pozzuolo received a Very High Rating in both Legal Ability and Ethical Standards from Martindale-Hubbell.

B. BLOGS

1. The following are a few of the business, tax, employment, estate planning and business litigation blogs posted on our main website www.pozzuolo.com during the past month:

- a. Decedent's Daughter Had No Standing To Request An Accounting Of Agents Exercise Of Power Of Attorney;
- b. How To Buy An Existing Franchise; and,
- c. Commercial/Business Negotiation Lessons, Strategies and Techniques Part 4- Dealing With Egos And Personalities.

Please visit our website www.pozzuolo.com for more information on these and other relevant business, tax, estates, business litigation and employment topics.

2. The following are a few of the family law blogs posted on our family law website www.pozzuolofamilylaw.com during the past month:

- a. Dividing Up Debt In A Divorce;
- b. Effect Of Divorce On Life Insurance; and,
- c. Gag Order Issued In Child Custody Case.

Please visit our website www.pozzuolofamilylaw.com for more information on these and other relevant family law topics.

RECENT EASTERN DISTRICT OF PENNSYLVANIA RULING FINDS THAT AN EMPLOYER MAY BE SUED OVER SEXUAL HARASSMENT BY A NON-EMPLOYEE

In the 2019 Eastern District of Pennsylvania case *Hewitt v. BS Transp. of Ill., LLC*, 355 F.Supp. 3d 227, the Honorable Jan F. DuBois held that the defendant employer may be held liable for discrimination by a non-employee, under the theory of hostile work environment, “where the employer knows or should have known of the conduct and fails to take immediate and appropriate corrective action.” Because the Third Circuit of Appeals has not addressed this issue, the Court looked to other courts that have held that the employer may be liable. In *Hewitt*, Plaintiff was employed by defendant BS Transportation as a freight driver. His job duties entailed driving a truck to defendant Sunoco’s refinery and loading oil into the truck on a weekly basis. While at the Sunoco refinery, Plaintiff alleged that a Sunoco employee would routinely sexually harass him, both verbally and physically.

While the Court dismissed many of the Plaintiff’s claims, the Plaintiff was allowed to proceed on his claims for sexual discrimination against his employer, defendant BS Transportation, stemming from the allegations that his employer failed to take action on his reports to his supervisor that a non-employee of BS Transportation who was employed by Sunoco was regularly sexually harassing him during the course of his employment. The

Plaintiff reported the sexual harassment to his supervisor on numerous occasions and his supervisor engaged in a discussion with the non-employee's supervisor at Sunoco on at least one occasion. No action was taken as a result of these reports. Plaintiff continued to be sexually harassed by the Sunoco employee and the unwanted contact escalated to threats of physical violence.

We will continue to monitor developments in both Federal and State Courts as this ruling is addressed in subsequent court decisions. However, this recent opinion reemphasizes to our business clients the importance of paying attention to any and all allegations of sexual harassment in the workplace, even from non-employees, as one lawsuit can cost hundreds of thousands of dollars to settle and/or defend. We cannot stress enough that the burden of preventing sexual harassment rests on the employer. Therefore, at a minimum, our business clients must protect itself and the following checklists from the United States Equal Employment Opportunity Commission. ("EEOC") is a useful Employer tool in thinking about and taking steps to prevent harassment in the workplace and responding to harassment when it occurs:

- An unequivocal statement that harassment based on any protected characteristic will not be tolerated;
- An easy-to-understand description of prohibited conduct, including examples;
- A description of a reporting system-available to employees who experience harassment as well as those who observe harassment-that provide multiple avenues to report, in a manner easily accessible to employees;
- A statement that the reporting system will provide a prompt, thorough, and impartial investigation;
- A statement that the identity of an individual who submits a report, a witness who provide information regarding a report, and the target of the complaint, will be kept confidential to the extent possible consistent with a thorough and impartial investigation;
- An assurance that the employer will take immediate and proportionate corrective action if it determines that harassment has occurred;
- An assurance that an individual who submits a report (either of harassment experienced or observed) or a witness who proved information regarding a report will be protected from retaliation from co-workers and supervisors;
- A statement that any employee who retaliates against any individual who submits a report or provided information regarding report will be disciplined appropriately; and,
- The statement is written in clear, simple words, in all languages commonly used by members of the workforce.

Please contact our skilled Employment Law and Litigation Attorneys if you have any questions or comments on this topic.

PUBLICATIONS

All of the following professional publications and past newsletters written by attorneys of this office are available by clicking here: http://pozzuolo.com/Pubs_Articles.shtml

Corporate/Tax Articles

- Bankruptcy - How To Prevent It And How To Cope With It Should It Happen To Your Business
- Deferred Compensation Rewards And Retains Key Employees
- Design Buy-Sell Agreements For Maximum Utility
- How An S Corporation Avoids The Double Taxation Incurred When Excessive Compensation Is Treated As A Dividend
- How Mortgage Lenders Should Draft Broker Agreements To Avoid RESPA Violations
- How To Look, Act And Sound Like A Professional Corporation
- How to Structure a Suitable Buy-Sell Agreement
- How To Use Non-Qualified Deferred Compensation Arrangements As A Business, Retirement And Tax Planning Tool
- Money Purchase Pension Plan Falls Out Of Favor
- Protecting A Client's Business From Unfair Competition Using Restrictive Covenants
- Structuring Loans From Qualified Plans - How To Handle The Strict Tax Rules
- What Type of Qualified Corporate Retirement Plan Best Serves Your Business, Tax And Retirement Needs
- Why An Employment Contract Is Mandatory

Estate Planning Articles

- Adapt Estate Planning Strategies to Fit the Needs of Same-Sex Couples
- College Funding Tool Offers Estate Planning Advantage
- Diversify Strategies For An Effective Estate Plan
- Divorce and Estate Planning
- Divorce Raises The Need For Performing An Estate Planning Review
- Drafting The Durable Power Of Attorney For Wealth Protection Purposes
- Estate Planning For Pet Owners
- Remarriage Situations Can Raise Special Estate Planning Considerations
- Six Proven Estate Planning Techniques
- Special Needs Trust - An Estate Planning Tool For The Disabled
- The Limited Liability Company - A Sophisticated Tool For Estate Planning

- Using Trusts To Maximize Family Protection And Minimize Estate Tax

Why Living Wills- Advance Directives Are An Essential Part Of Estate Planning

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects. It is to provide insight into legal developments and issues. You should always consult with legal counsel before taking any action on matters covered in our updates.

This newsletter is courtesy of Pozzuolo Rodden, P.C.

To subscribe, unsubscribe, or for any questions, please contact us at INFO@POZZUOLO.COM.