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## THE LAW REGARDING Sexual Harassment in the Workplace, INCLUDING WATER SYSTEMS

All too often, we read or hear in the media of another case of sexual harassment in the workplace. In many of those cases, careers are ended, or at least interrupted, victims suffer, including families of those involved, and the good names of employers and/or perpetrators, become no longer good names. A very recent and high-profile example, as reported on October 20, 2023, in an article by Peter Hall of the *Pennsylvania Capital-Star*, is that of Governor Josh Shapiro's office paying \$295,000 in public money in a settlement involving his Legislative Affairs Secretary, Mike Vereb, who was accused of sexually harassing a former female employee. Mr. Vereb has resigned from his employment. The settlement is of a PA Human Relations Commission case. Under the terms of the settlement, there is no admission of liability by the Governor's office.

Sexual harassment in the workplace is all too common and widespread. It affects all levels of the employment hierarchy and many workplaces. Another example is former New York Governor Andrew Cuomo resigning after an inquiry found he had sexually harassed multiple women. Having represented public

water systems in the defense of sexual harassment cases, I can tell you it is far better for public water systems and for their employees to have anti-sexual harassment policies in place and seriously enforced.

What is sexual harassment in the workplace? The answer is best explained by the PA Human Relations Commission ("PHRC") and the U.S. Equal Employment Opportunity Commission ("EEOC") who have very similar rules and guidelines on sexual harassment. As the PHRC's Guidelines on Sexual Harassment (the "Guidelines") explain harassment on the basis of sex is a violation of both the *PA Human Relations Act* and the *U.S. Civil Rights Act*. The stated purpose of the Guidelines is to "...help assure that everyone in Pennsylvania is permitted to work in an environment free from unsolicited and unwelcome sexual advances." The Guidelines are utilized by the PHRC in the investigation and determination of complaints of discrimination in employment on the basis of harassment because of sex.

In a nutshell, as set forth in the Guidelines, unwelcome sexual advances, requests for sexual favors and other

verbal or physical conduct of a sexual nature constitute sexual harassment. The following key provisions of the Guidelines describe what constitutes sexual harassment:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,
- submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating hostile, or offensive working environment.

Several examples of sexual harassment cases in the public water sector are the following:

- In an article published by *The Eagle Tribune* on April 15, 2021, it was reported that an employee of the Methuen, MA Water Department filed a federal lawsuit against the city based on a sexual harassment claim she alleged was brought to the attention of her supervisor but never properly addressed. Her allegations included

a coworker approaching her with his pants unbuttoned and unzipped on two occasions, and another coworker telling her he dreamed he engaged in sexual contact with her. She alleged when she brought this to the attention of her supervisor "his most common response was that this behavior was normal when working with men."

- In an article published by the *Los Angeles Times* on April 21, 2022, it was reported that a state audit of the Metropolitan Water District of Southern California (MWD) found that MWD left its employees exposed to harassment. Among the examples was MWD substantiating a report of sexual harassment and promising the victim she would not have to work with the harasser again. However, several years later, the victim was directed to work "one-on-one" with the harasser. When she complained to her manager about that, she was told she had to work with the harasser. Another example in the article involves a case where an MWD manager was found to have violated a sexual harassment

policy and was given only a two-day suspension. The manager went on to retire as planned and did not serve the suspension.

A wonderful thing about our justice system in the United States is that it is built on the premise of innocence until proven guilty. So, when a harassment complaint is filed against a public water system, or an employee of a public water system that presumption applies. The reason I raise this point is because public water systems should not rush to judgement when a claim of harassment is made. What they should do is rush to look at the record as whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The appropriate action within a prompt time period should then be taken. Remember, justice delayed is justice denied. Those words of wisdom also apply to sexual harassment cases.

In conclusion, as the Guidelines state "...Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary

to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII and the Pennsylvania Human Relations act, and developing methods to sensitize all concerned." If that is done consistently, the workplace should have a welcome, rather than hostile, environment in which to work.

### CUSTOMERS IN CONNECTICUT FILE CLASS ACTIONS AGAINST WATER SYSTEMS REGARDING PFAS

In the October 23, 2023 issue of *CT News Junkie*, it was reported that groups of water customers in Connecticut are seeking class action certification in lawsuits against both Aquarion Water Company and the Connecticut Water Company "...over claims the suppliers sold water containing dangerous levels of PFAS chemicals." Across the country, many water systems have sued manufacturers of PFAS chemicals. In these two Connecticut cases, it is customer groups who are suing water systems regarding PFAS. The customer group in Connecticut Water's case contend because that water system sued suppliers of PFAS chemicals this means the water company was aware or should have been aware PFAS chemicals are toxic and harmful to human health. The water companies contend there are currently no federal or Connecticut enforceable standards for the treatment of PFAS substances.

#### About the Author



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of utility and environmental law. He can be reached at [mklein@cozen.com](mailto:mklein@cozen.com) and 717-703-5903. This column is intended to be a discussion of legal issues in the water industry. It is not intended to be legal advice, or to establish any attorney-client relationships. Before making any legal decisions regarding anything discussed in this column you should always consult with an attorney. ♡

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