

LEGALLY SPEAKING

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What Exactly is Sexual Harassment Anyway?

A Tough Question for a Tough Issue

My clients often call me and question whether a particular event constitutes sexual harassment. The question often becomes very subjective - one person's sexual harassment may be perceived by another person as no big deal. What does the law provide?

The courts define sexual harassment as unwelcomed sexual advances, requests for sexual favors and/or verbal or physical conduct of a sexual nature that results in an alteration of the terms and conditions of employment. Alright, that sounds interesting, but does that mean?

The courts say that the harassing conduct must be unwelcomed and coercive, as opposed to consensual. Our laws prohibit both heterosexual and homosexual sexual harassment.

Sexual harassment must be so "severe" or "pervasive" to make a reasonable person believe that the conditions of employment are altered and the work environment is hostile or abusive.

The laws in New Jersey have given us some guidance as to what exactly this means. They give us some examples of prohibited behaviors that may constitute sexual harassment:

Gender-based remarks and comments; unwanted

physical contact such as intentional touching, grabbing, pinching, brushing against another's body or impeding or blocking movement; and verbal or written sexually suggestive or obscene comments, jokes or propositions including letters, notes, e-mail, invitations, gestures or inappropriate comments about a person's clothing.

Sexual harassment may also include visual contact, such as leering or staring at another's body, gesturing, displaying sexually suggestive objects, cartoons, posters, magazines or pictures of scantily-clad individuals; or explicit or implicit suggestions of sex by a supervisor.

If you or someone you know believes that they have been a victim of sexual harassment, please call my office to discuss your situation.

-Charles Z. Schalk, Esq.

Mr. Schalk is a partner at MSC&G who concentrates his practice in employment, discrimination, civil rights and criminal defense.

Is Your Family Adequately Protected with your Auto Insurance Choices?

How much automobile insurance do you have? How much you need? When you purchase or renew your automobile insurance policy, you are faced with many choices. If you don't purchase the proper coverage, you may be limited in the medical care that you receive, or may not be able to sue at all, should someone else's negligence cause you or a family member to be injured in an automobile accident. If you don't purchase adequate liability limits, your assets may be at risk.

In 1988, the State of New Jersey adopted the Automobile Insurance Cost Reduction Act. The law requires that the owner of every car registered or principally garaged in New Jersey to purchase an automobile liability insurance policy. The minimum liability and uninsured motorist limits under a Standard Policy are \$15,000 per person/\$30,000 per accident for bodily injury, and \$5,000 for property damage. You may choose to purchase higher limits, usually up to \$500,000.

The Standard Policy also provides medical expense benefits (PIP) coverage up to \$250,000 per person per accident. You may opt for lower coverage, but you may not have enough coverage to pay for all medical expenses, if there is a serious accident.

If you purchase a Standard Policy, you must choose a "lawsuit option" that will determine if you can make a claim or not. You must either select the "limitation on lawsuit" option, or the "no limitation on lawsuit" option - the Verbal Threshold. If you choose to limit your right to sue, you will pay a lower premium, but you also limit your ability to sue unless the injured person sustained:

If you fail to make a will, you have lost the opportunity to do valuable estate planning that may avoid state and Federal estate taxes on your death. The Federal estate tax begins at a rate of forty-five percent (45%) on estates more than

- (1) Death;
- (2) Dismemberment;
- (3) Significant disfigurement or scarring;
- (4) Displaced fractures;
- (5) Loss of fetus; or
- (6) A permanent injury.

A permanent injury has been sustained when the body part or organ, or both, has not healed to function normally with further medical treatment. A sprain or strain of the cervical or lumbar spine is not considered a "permanent" injury, but a herniated disc usually is.

The Association of Trial Lawyers of America recommends that you purchase the highest liability limits that you can afford, medical expenses of \$250,000, do not elect your health care company as a primary coverage, and do not choose the Limitation on Lawsuit option.

-Thomas F. Chansky, Esq.

Mr. Chansky is a partner at MSC&G who concentrates his practice in personal injury, medical malpractice, products liability, insurance defense and civil litigation.

Why Should I Have a Will and Power of Attorney?

Why is so important for everyone to have a will? If you die without a will ("intestate"), New Jersey law will dictate how your estate will be distributed. This distribution may not be what you intended for your spouse, family and friends.

You will have lost your flexibility to leave specific bequests, to establish trusts for minor children, and to appoint executors, trustees and guardians. You will have no control over who serves as administrator of your estate because New Jersey law will determine who has a right to act as your administrator.

\$1,500,000. Through sound estate planning, your will can be drafted to avoid or reduce these taxes.

Another document that can become even more

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vital in recent years is a Durable Power of Attorney. In a Durable Power of Attorney, you appoint someone to take care of all your personal and business affairs. A Power of Attorney is “durable” if it provides that it will remain effective even in case of your physical or mental disability. It is important to execute a Power of Attorney when you are well and in sound mind rather than waiting until you are incapacitated.

If you become disabled and you do not have a Durable Power of Attorney, your family may need to bring guardianship proceedings in court seeking to have you declared incompetent and the appointment of a guardian to handle your affairs. These proceedings are expensive, time consuming and can be emotionally trying. These problems are avoidable if you execute a Power of Attorney when you are well.

–**Michael V. Camerino, Esq.** Mr.

Camerino is a partner at MSC&G who concentrates his practice in wills, trusts and estates, banking, municipal, commercial law, and real estate.

Important Information Regarding your Will

Your will is a “living” document in the effective planning of your personal affairs. It should be reviewed regularly by your attorney. This is made necessary by changes, from time to time, in the property, tax and estate laws, but also by changes in:

YOUR

- Name
- Marital Status
- Number of Children
- Financial Condition

BENEFICIARIES

- Name
- Marital Status
- Number of Children
- Financial Condition

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Death

PROPERTY

- Amount
- Kind
- Value
- Mortgage
- Location

It is also wise to review your will when learned that you have been given property, powers or duties under someone else’s will. Failure to do so can be extremely costly, or worse it can mean the complete frustration of your wishes and plans.

**HAVE YOUR WILL REVIEWED
REGULARLY - AT LEAST EVERY TWO
YEARS.**

Please contact our firm if you have any questions regarding your estate plan, will, power of attorney, living will and/or state and Federal estate and inheritance taxes.

Drunk Driving Charges Require Proof of Operation of a Motor Vehicle While Under the Influence of Alcohol

In a drunk driving case, the State must not only prove that you were intoxicated, but in addition that you were operating a motor vehicle. This sounds obvious but it is not always. I have experienced several cases first hand where my client was charged with drunk driving but upon close review, there was a legal argument that the client was not actually operating the motor vehicle and we were able to obtain a favorable result for the client.

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The seminal case in this area was the case of State v. Daly, a New Jersey Supreme Court case. In the Daly case, the defendant was arrested at 3:20 a.m. while sitting in his car which was parked in the parking lot of a tavern. According to the police officer, the lights of the car were off, but the engine was running. Mr. Daly was sitting in the driver's seat, which was slightly reclined and looked up when the officer shined a light into the car. The officer testified that Daly was not asleep at the time and that Daly told him that he was sitting in the car to keep warm and that he intended to drive home in a little while.

The officer had Daly step out of the car and immediately noticed that he was intoxicated, and told Daly that due to his condition, he could not drive the car. Daly uttered a vulgarism and told the officer, "I will drive my car when I feel like it." Daly was arrested and charged with a DUI.

At the trial, Daly conceded he was intoxicated. He testified that he had been drinking in the tavern and left between 12:00 and 12:30 a.m. He stated that he then realized that he had too much to drink and decided to sleep it off. He then got in the car, reclined the seat and fell asleep. He was awakened a few times by the cold and started the engine to get some heat in the car. He stated that he told the officer that he had no intention of driving, but was arrested anyway.

The New Jersey Supreme Court held that the State failed to prove that Daly was "operating" his motor vehicle within the meaning of the statute, since the defendant denied any intent to move or drive his car until he sobered up, and

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contrary to the State's contention, there was no evidence from which any such intent could be inferred beyond a reasonable doubt. The tavern was required to close by 2:00 a.m., and thus Daly had been in his car for at least one hour and twenty minutes without driving when come upon by the police.

The New Jersey Supreme Court further held that merely starting the vehicle was not sufficient evidence of intent to drive the vehicle.

Drunk driving offenses are serious charges that oftentimes carry serious consequences, such as incarceration, loss of driving privileges, and significant fines and penalties. When someone is charged with a drunk driving offense, it is extremely helpful to talk with an attorney familiar with this body of law, to ascertain if the person has a defense as Mr. Daly did in the above case. Our office handles these types of cases and we strongly encourage you to give us a call should this situation happen to you.

—Charles Z. Schalk, Esq.

Mr. Schalk is a partner at MSC&G who represents clients charged with serious traffic offenses such as drunk driving, no insurance, no license, speeding and possession of CDS.

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