

# William H. Connolly & Co.

## Insurance & Risk Management



### IN THIS ISSUE:

- 3 Mold & Moisture Control
- 4 Q&A: Long Term Disability Coverage

## Employment Practices Liability: Sexual Harassment-Changes in the Law

by Stephen D. Crosta, Esq.

For much of 1998, the American public was focused on Washington, D.C. and the unfolding drama between President Clinton and Monica Lewinsky. In fact, the Associated Press ranked the story linking President Clinton with the former White House intern as the year's top news story.

That story was the background for an even more significant event for employers, human resource professionals and risk managers. Right down the street from the White House, the United States Supreme Court ruled in the landmark cases of Burlington Industries, Inc. v. Ellerth, 534 U.S. 742 (1998), and Faragher v. Boca

Raton, 524 U.S. 775 (1998), that an employer is liable for the conduct of its supervisors who create a hostile work environment or engage in sexual harassment.

In so ruling, the Supreme Court established an employer's legal duty to be proactive in preventing harassment in the workplace. Specifically, the Court imposed two duties on employers. First, employers must take reasonable steps to prevent harassment in the

workplace. Second, the employers must "promptly" correct any sexual harassing behavior as it occurs. The Court went on to explain that, in certain circumstances, employers who comply with these duties could avoid liability. Compliance with these duties serves as a

potential legal defense for the employer.

These rulings serve as the proverbial shot across the bow of corporate America. Together, they establish a clear expectation that employers must develop and implement preventative and corrective measures for

*continued on page 2*



### QUESTIONS FOR YOU TO CONSIDER:

1. Do you have an employment manual?
2. Do you have workplace policies that prohibit all forms of harassment?
3. Do you have mandatory anti-harassment/discrimination training for your managers and non-supervisory employees?
4. Is your anti-harassment policy posted and regularly distributed to your employees?
5. Do you require your employees to sign an acknowledgement of receipt of the anti-harassment policy?
6. Are your managers familiar with your anti-harassment policies?
7. Are your managers committed to preventing harassment in the workplace?
8. Do you have formalized complaint and reporting mechanisms?
9. Do you solicit feedback from your employees to determine whether or not they believe that the policy in place is known and effective?

workplace harassment. Since these rulings, several legal decisions have further expanded the liability of employers for other Employment Practices claims.

Last summer, the New Jersey Supreme Court significantly narrowed the employer defenses that had been enunciated in Faragher and Ellerth. In *Gaines v. Bellino*, 173 N.J. 301 (2002), the New Jersey Supreme Court stated that the effectiveness of

preventative measures is a key factor in determining whether or not the employer would be immune from vicarious liability for its employee's harassing conduct. Absence of effective preventative measures would present evidence of an employer's negligence.

**The Case**

Maria Gaines worked as a corrections officer at the Hudson County Correctional Facility. She claimed that over several years her supervisor made sexually suggestive comments and, on one occasion, forcibly kissed her.

In response to her lawsuit, the County of Hudson sought dismissal of the case based upon the Faragher and Ellerth

defense. Namely, that because it had an anti-harassment policy and because the supervisor was disciplined for his actions, the County could not be held liable. Despite the fact that the County did have an anti-harassment policy in place and that Maria Gaines acknowledged that she was aware of the policy, the New Jersey Supreme Court ruled that the County was not insulated from liability because it had failed to

provide training to supervisors and to "employ a meaningful sensing and monitoring mechanism to assess the soundness of its anti-harassment policy."

The Court stated that for a sexual harassment policy to be considered effective, it must include:

- Mandatory sexual harassment training for supervisors and managers and sexual harassment training must be offered to all members of the organization**

and

**The implementation of an effective sensing or monitoring system to check the reliability of the prevention and remedial measures available to employees in the workplace.**

In effect, the Court reiterated its long-standing admonition to employers that their sexual harassment policies have to be more than just words. In *Gaines*, the Court found that there was a history of employee complaints that had gone unaddressed. In addition, there was testimony that other employees had not received training regarding the sexual harassment policy. This had the effect of creating an environment that discouraged employees from bringing forth complaints because they believed that the effort was in vain.

In the end, this decision makes it clear that employers cannot stand back and wait for employees to come forward with complaints. It is incumbent upon the employer to be proactive in obtaining feedback from employees to ensure that the reporting mechanism for employees is known and effective.

An employer is liable for the conduct of supervisors who create a hostile work environment or engage in sexual harassment.



*The United States Supreme Court*



**WHAT THIS MEANS TO YOU**

The recent *Gaines* decision makes it clear that employers must put forth an anti-harassment policy which includes:

- Mandatory training for supervisors and managers
- Training offered to all members of the organization
- An effective sensing or monitoring mechanism to check the reliability of the prevention and remedial measures available to employees. Your policy and reporting system must be comprehensive and cannot be "in name only."

# Mold and Moisture Control in Your Home

by Kathryn C. Coughlin, CPCU

**M**old is something that has always been with us. It occurs naturally around moisture. We clean it off the tiles in our bathrooms and off the walls in our basements.

Over the past couple of years, the “mold issue” has generated a good deal of press. New construction methods instituted in the 1970’s to make buildings and homes more energy efficient are among the reasons why mold has become more prevalent. Tight sealings around structures and heavy insulation significantly reduce a structure’s ability to breathe, which allows moisture to be trapped within the walls. Wherever moisture is a problem, mold has the means to grow and spread.

Since individuals have different sensitivities to mold, and some have allergic reactions to it, we also hear a lot about the health implications of mold.

Coverage already exists in standard Homeowners Insurance policies to pay for some mold damages. Mold problems caused by water damage such as an accidental discharge or overflow of water or steam from plumbing, heating, air conditioning or automatic sprinkler devices, or wind storm are generally covered.

Both the increasing publicity about the adverse affects of mold and some significant law suits, have prompted the insurance industry to take steps to take control of the mold exposure. Homeowners Insurance carriers now offer limits of \$10,000 for mold coverage with buy-back options for higher limits for an additional premium. These sublimits include coverage for mold cleanup or remediation.

If you have questions about mold coverage in your Homeowners policy, please get in touch with your account representative by phone or e-mail.

## WHAT THIS MEANS TO YOU

- ✓ Fix leaks and seepage. If water is entering the house from the outside, your options range from simple landscaping to extensive excavation and waterproofing. (The ground should slope away from the house.) Water in the basement can result from the lack of gutters or a water flow toward the house. Water leaks in pipes or around tubs and sinks can provide a place for biological pollutants to grow.
- ✓ Put a plastic cover over dirt in crawlspaces to prevent moisture from coming in from the ground. Be sure crawlspaces are well-ventilated.
- ✓ Use exhaust fans in bathrooms and kitchens to remove moisture to the outside (not into the attic). Vent your clothes dryer to the outside.
- ✓ Turn off certain appliances (such as humidifiers or kerosene heaters) if you notice moisture on windows and other surfaces.
- ✓ Use dehumidifiers and air conditioners, especially in hot, humid climates, to reduce moisture in the air, but be sure that the appliances themselves don’t become sources of biological pollutants.
- ✓ Raise the temperature of cold surfaces where moisture condenses. Use insulation or storm windows. (A storm window installed on the inside works better than one installed on the outside.) Open doors between rooms (especially doors to closets which may be colder than the rooms) to increase circulation. Circulation carries heat to the cold surfaces. Increase air circulation by using fans and by moving furniture from wall corners to promote air and heat circulation. Be sure that your house has a source of fresh air and can expel excessive moisture from the home.
- ✓ Pay special attention to carpet on concrete floors. Carpet can absorb moisture and serve as a place for biological pollutants to grow. Use area rugs which can be taken up and washed often. In certain climates, if carpet is to be installed over a concrete floor, it may be necessary to use a vapor barrier (plastic sheeting) over the concrete and cover that with sub-flooring (insulation covered with plywood) to prevent a moisture problem.

*This advice was excerpted from the EPA document on mold prevention. For more information see the EPA website: [www.epa.gov/iaq/molds/moldresources.html](http://www.epa.gov/iaq/molds/moldresources.html)*

Commercial/Business  
Insurance

Personal Insurance

Hospitals & Health  
Care Providers

Colleges, Universities  
& Schools

Metalworkers Plus

Employee Benefit  
Programs

Risk Management  
Services

# Q&A



## Long Term Disability

### What is Long Term Disability coverage?

Long Term Disability policies protect people who lose their income because they have become disabled. Many people have this coverage through their employers, but it is possible to buy individual long-term disability coverage.

### What coverage does the state provide if a person becomes disabled?

New Jersey employees, along with those in New York, California, Hawaii, Rhode Island and Puerto Rico, are covered for short term disability through the state. These benefits, mandated by state law, vary from state to state. In New Jersey, a disabled worker (who was not injured on the job) will receive 66.66% of a weekly salary for 26 weeks to a maximum of \$450 per week.

### Do most businesses provide Long Term Disability coverage

#### as part of the benefits package?

Large companies sometimes provide a benefit but most companies do not.

### What questions should I ask my HR officer about my Long Term Disability coverage?

Do I have LTD coverage through this company? What is the maximum benefit in both dollars and duration?

### If I am self-employed, what should I do?

If you are self employed — a lawyer, graphic designer, computer consultant etc. — you can buy Long Term Disability coverage.

Policies are issued and limits are established based on several factors including type of work, annual income and income history.

*Gary Donadio can answer all your questions about life, health and disability insurance. You can reach him by phone or e-mail at: [gdonadio@whconnolly.com](mailto:gdonadio@whconnolly.com)*

4 Articles which do not  
carry a byline are  
supplied by PIA.