

## DISCOVERY OF OTHER ACTS OF DISCRIMINATION AND OTHER COMPLAINTS OF DISCRIMINATION AGAINST EMPLOYERS

by Alan H. Schorr

The law pertaining to the discovery in sexual harassment and other discrimination cases has recently expanded the scope of discovery that can be sought and discovered. In New Jersey, three key recent cases expanding the scope are Harding v. Dana Transport, Inc., 914 F. Supp. 1084 (D.N.J. 1996); Payton v. New Jersey Turnpike Authority, 148 N.J. 524 (1997); and Connolly v. Burger King, 306 N.J. Super. 344 (App. Div. 1997). Pennsylvania, New York, and Second and Third Circuits have all followed the trend of permitting discovery and admissibility of evidence of other acts of discrimination. Aman v. Cort Furniture Rental, 85 F.3d 1074 (3d Cir. 1996); Glass v. Philadelphia Elec. Co., 34 F. 3d 188, 194 (3d Cir. 1994); Hurley v. The Atlantic City Police Dept., 1999 U.S. App. LEXIS 4582 (3d. Cir. March 18, 1999); Quarantino v. Tiffany & Co., 71 F.3d 58 (2d Cir. 1995); Rifkinson v. CBS Inc., 1997 U.S. Dist. LEXIS 15865 (S.D. N.Y. - Oct. 14, 1997).

This powerful evidence can shift the momentum of the plaintiff's case, increase pressure on defendants, and ultimately may convince a jury that the defendant harbors a discriminatory, not only against the plaintiff, but also against similarly situated employees.

These cases have ruled that evidence of other discrimination in the workplace, as well as employers' internal investigations of complaints of discrimination are discoverable because they are necessary to determine whether or not the employer's practice and policies provide effective remedial measures to prevent future discrimination and to protect employees from further discrimination, harassment and retaliation. Although the rulings appear to be new law, they are grounded in well-established law that has been evolving throughout the 1990's. Set forth below are the categories of legal reasoning upon which the expanded discovery has been granted.

### SCOPE OF DISCOVERY

Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401.

Federal Rules provide for broad discovery. It is not necessary under federal rules for evidence to even be admissible, so long as it is reasonable calculated to lead to the discovery of admissible evidence. Fed. R. Civ. P. 26(b)(1) states:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other

tangible things and the identity and location of persons having knowledge of any discoverable matter. The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

## EFFECTIVE REMEDIAL MEASURES

New Jersey has permitted the discovery of investigations of the harasser's claims and of other claims of harassment. The efficacy of an employer's remedial program is highly relevant to both the employee's claim against the employer and against the employer's defense to liability. Effective remedial measures include the process by which the employer arrives at the sanctions that it imposes on alleged harassers. Payton v. New Jersey Turnpike Authority, *Supra*. In Payton, the Supreme Court stated:

In short, a remedial scheme that reaches the correct result through a process that is unduly prolonged or that unnecessarily and unreasonably leaves the employee exposed to continued hostility in the workplace is an ineffective remedial scheme. Such a process, in reality, indirectly punishes employees with the temerity to complain about sexual harassment and cannot constitute "effective" remediation. Indeed, such a scheme can be viewed only as an attempt by the employer to discourage employees from coming forward and utilizing the employer's remedial process in the first place. Payton v. New Jersey Turnpike Authority, *Id.* at 538-39.

The Appellate Division, in Connolly v. Burger King Corp., 306 N.J. Super. 344 (App. Div. 1997) , clarified the scope of discovery permitted under Payton, reasoning that:

Moreover, the absence of effective responses to sexual harassment claims in general may foster an atmosphere of tolerance thereby contributing to a sexually hostile atmosphere and may constitute the willful indifference which is a predicate for the award of punitive damages. . . Finally, we note that the discovery may provide evidence that the employment of other complainants had been terminated, which may lead to probative evidence regarding plaintiff's contention that she was the victim of retaliatory discharge. Connolly v. Burger King, *supra*, at 349.

## EMPLOYER'S LIABILITY

An employer's liability for the discriminatory acts of its employees flows from Agency law, particularly Restatement (Second) of Agency §219. Section 219 of the Restatement (Second) of Agency outlines the liability of a master for the torts of a servant. Section 219 states: (1) A master is subject to liability for the torts of his servants committed while acting in the scope of their employment. (2) A master is not subject to liability for the torts of his servants acting outside the scope of their employment unless:

- a. the master intended the conduct or consequences, or
- b. the master was negligent or reckless, or

- c. the conduct violated a non-delegable duty of the master, or
- d. the servant purported to act or to speak on behalf of the principal and there was reliance upon apparent authority, or he was aided in accomplishing the tort by the existence of the agency relation.

The New Jersey Supreme Court held in Lehmann, *supra*, that an employer can be vicariously liable even when the employee is not acting within the scope of his employment. Lehmann, at 623.

The New Jersey Supreme Court stated in Lehmann, *supra*, that:

An employer may also be held vicariously liable for compensatory damages for supervisory sexual harassment that occurs outside the scope of the supervisor's authority, if the employer had actual or constructive notice of the harassment, or even if the employer did not have actual or constructive notice, if the employer negligently or recklessly failed to have an explicit policy that bans sexual harassment and that provides an effective procedure for the prompt investigation and remediation of such claims. Lehmann v. Toys 'R' Us, 132 N.J. at 624.

Federal Courts have ruled that an employer's liability is governed by the principles of agency law. Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57 (1986); Bouton v. BMW of North America, Inc., 29 F. 3d 103, 106 (3d Cir. 1994); Harding v. Dana Transport, Inc., 914 F. Supp. 1084, 1094 (D.N.J. 1996). According to agency principles, liability exists where the defendant knew or should have known of the harassment and failed to take prompt remedial action. Andrews v. City of Philadelphia, 895 F.2d 1469, 1486; Steele v. Offshore Shipbuilding, Inc., 867 F.2d 1311, 1316 (11th Cir. 1989). Further, following the Federal interpretation of agency principles applied to hostile working environments, if a Plaintiff proves that management-level employees had actual or constructive knowledge about the existence of a sexually hostile environment and failed to take prompt and adequate remedial action, the employer will be held liable. Upjohn Co. v. United States, 449 U.S. 383, 391 (1980).

## FEDERAL LAW

In looking to Federal law for guidance on the issues before the Court, Federal Courts have consistently held that evidence of discrimination and discrimination against other employees is relevant, admissible, and discoverable. Hurley v. The Atlantic City Police Department, 933 F. Supp. 396, 412, fn. 11 (D.N.J. 1996), *aff'd in pertinent part*, 1999 U.S. App. LEXIS 4582 (3d. Cir. 1999)

Citing Lehmann v. Toys 'R' Us, 132 N.J. 587, 611 (1993), the New Jersey District Court held that the Plaintiff may use evidence that other women in the workplace were sexually harassed because the plaintiff's work environment is affected not only by conduct directed at herself but also by the treatment of others. Hurley v. The Atlantic City Police Department, *supra*, at 412. The Court ruled that such evidence is admissible, among other

bases, under Fed. R. Evid. 404 to prove that a defendant harbors discriminatory intent towards a particular group. See also Garvey v. Dickenson College, 763 F. Supp. 799 (M.D. Pa. 1991); West v. Philadelphia Elec. Co., 45 F. 3d 744, 757 (3d Cir. 1995) ("evidence of harassment of others will support a finding of discriminatory intent with regard to a later incident.")

Federal Courts have held that the fact-finder is entitled to consider all of the evidence of a hostile environment to determine the reasons for the employer's actions. Aman v. Cort Furniture Rental Corp., 85 F.3d (3d Cir. 1996); Glass v. Philadelphia Elec. Co., 34 F.3d 188, 194 (3d Cir. 1994). Evidence of prior acts of discrimination is relevant to an employer's motive even where the evidence is not extensive enough to establish discriminatory animus itself. Estes v. Dick Smith Ford, Inc., 856 F.2d 1097, 1104 (8th Cir. 1988); Heyne v. Caruso, 69 F.3d 1475, 1480 (9th Cir. 1995); EEOC v. Caruso, 69 F.3d 1475, 1480 (9th Cir. 1994).

Judge Irenas, in Hurley v. The Atlantic City Police Department, *supra*, at 412., set forth in detail his persuasive and logical rationale for permitting evidence of other acts and complaints of discrimination at the workplace to be admitted at trial. Citing case law from numerous State and Federal jurisdictions, Judge Irenas wrote:

Plaintiff's treatment during the statutory period was unquestionably influenced by and related to her treatment throughout the course of her career at the ACPD. Plaintiff's experience was reflective of the general attitudes of the men around her; those attitudes also influenced, and were revealed in, the treatment of other women in the ACPD. In a case involving racial discrimination, the Third Circuit held that evidence that anonymous note-writers had referred to plaintiff as a "nigger" was evidential: "the court may also consider as circumstantial evidence the atmosphere in which the company made its employment decisions. One could infer from employees' remarks and the racially derogatory notes [plaintiff] received that management permitted an atmosphere of racial prejudice to infect the workplace." Josey v. John R. Hollingsworth Corp., 996 F.2d 632 (3d Cir. 1993). Similarly, in Morgan v. Hertz Corp., 542 F. Supp. 123 (W.D. Tenn. 1981), the court admitted evidence of a "history of vulgar and indecent language tolerated by management and directed toward women employees." The court held that such evidence was probative of workplace hostility.

All of this evidence, while not forming a basis for liability, permitted the jury to more intelligently evaluate the evidence that did create liability. Barring the evidence would have provided the jury with an incomplete, fragmented picture of the ACPD and plaintiff's life there. It would be like expecting someone to understand a movie, but letting her watch only the final twenty minutes, and letting her hear only the dialogue between the two most significant characters. See Andrews, 895 F.2d at 1484 (analogizing to a play and holding that a hostile work environment

analysis must concentrate on the "overall scenario" created by seemingly isolated and ambiguous incidents).

By admitting the evidence but forbidding the jury to consider it as directly relating to liability, we were able to balance the interests of the plaintiff and the defendants. The jury was better able to understand and evaluate the events that transpired between January 20, 1987, and January 20, 1993, without the defendants being unfairly prejudiced. The testimony of other harassment victims tends to prove that plaintiff's experience was not isolated. It suggests that Hurley's experience was not unique and her reaction not unwarranted. It also helps the jury to evaluate the likelihood that the ACPD knew what was taking place. The New Jersey Supreme Court has held that evidence of "harassment directed at other women was relevant to both the character of the work environment and its effects on the plaintiff." Lehmann v. Toys 'R' Us, Inc., 132 N.J. 587, 611, 626 A.2d 445 (1993). The court also stated that, "the plaintiff may use evidence that other women in the work place were sexually harassed. The plaintiff's work environment is affected not only by conduct directed at herself, but also by the treatment of others." Id.

We agree as well with the court in Garvey v. Dickinson College, 763 F. Supp. 799 (M.D.Pa. 1991), that such evidence is admissible, among other bases, under Fed. R. Evid. 404 to prove that a defendant harbors "discriminatory intent" towards a particular group. See, West v. Philadelphia Elec. Co., 45 F.3d 744, 757 (3d Cir. 1995) "evidence of harassment of others will support a finding of discriminatory intent with regard to a later incident"). We do not find that these incidents were too remote from the plaintiff and her work environment to be relevant, and we firmly believe that they helped to shed light on plaintiff's hostile work environment claims. n11.

n11 The admission of evidence of sexual harassment directed towards women other than the plaintiff is in fact very well supported in the case law. In addition to its holding in West, 45 F.3d at 757, the Third Circuit Court of Appeals has endorsed in dicta the idea that female employees other than the plaintiff should be permitted to testify in Glass v. Philadelphia Elec. Co., 34 F.3d 188, 195 (3d Cir. 1994). In that case, plaintiff Glass appealed from a jury verdict denying his claim for race and age discrimination. Glass argued that the district court had abused its discretion when it excluded evidence concerning the racial hostility of his work environment, and yet admitted evidence introduced by the employer showing that Glass had received poor evaluations. Glass had attempted to introduce evidence that would have shown that more senior employees posted hostile and demeaning images about him and that he was the subject of racially derogatory remarks.

The present case, of course, involves the admissibility of evidence of harassment directed not towards the plaintiff, but rather towards other women from her workplace. Nonetheless, the Glass court cited with approval cases that have held that evidence of discrimination against other members of the plaintiff's protected class is admissible in deciding a hostile work environment claim. Id. at 195, citing Hawkins v. Hennepin Technical Center, 900 F.2d 153, 155 (8th Cir. 1990)(holding that the district court abused its discretion in barring plaintiff from introducing evidence of sexual harassment of other employees in an action alleging unfair employment decisions based on sex), and Hunter v. Allis-Chalmers Corp., 797 F.2d 1417, 1421 (7th Cir. 1986)(affirming district court's decision to admit plaintiff's evidence of harassment against other black workers in case alleging racially discriminatory discharge because "evidence was relevant both in showing that Allis Chalmers condoned racial harassment by its workers and in rebutting Allis Chalmers' defense that it had fired Hunter for cause.")

Although the Glass decision arose in a factual setting somewhat different from the case at bar, district Judge Huyett of the Eastern District of Pennsylvania faced a similar situation. The Pennsylvania case involved a Title VII claim alleging sexual harassment and discrimination. In admitting testimony by other women, Judge Huyett wrote that, "to determine whether a plaintiff has proven a claim for sexual harassment based upon an intimidating, hostile, or offensive work environment, a court must examine the totality of the circumstances. Included in the totality of the circumstances is evidence of sexual harassment directed at employees other than the plaintiff, which is relevant to show a hostile work environment." Stair v. Lehigh Valley Carpenters Local 600, 813 F. Supp. 1116, 1119 (E.D.Pa. 1993).

Other cases have held with compelling consistency that testimony by other members of the plaintiff's protected class regarding the work environment is relevant and admissible. In Hicks v. Gates Rubber Co., 833 F.2d 1406 (10th Cir. 1987), a black female security guard brought an action under Title VII for racial and sexual harassment. The appellate court reversed the decision of the trial judge to exclude testimony that a number of the plaintiff's female coworkers had also been sexually harassed by plaintiff's supervisor. The appellate court reasoned that, "evidence of a general work atmosphere therefore -- as well as evidence of specific hostility directed toward the plaintiff -- is an important factor in evaluating the claim." Id. at 1415.

In Heyne v. Caruso, 69 F.3d 1475 (9th Cir. 1995), the court reached a similar conclusion. The plaintiff, a waitress, brought a Title VII claim for quid pro quo sexual harassment in which she claimed she had been fired for refusing her employer's sexual advances. The district court granted the

employer's motion in limine to bar testimony regarding the employer's alleged harassment of other female employees, reasoning that such testimony, while relevant to a hostile work environment claim, was more prejudicial than probative of a quid pro quo sexual harassment claim. Id. at 1477. In reversing, the Circuit court held that, "the sexual harassment of others...is relevant and probative of [the defendant's] general attitude of disrespect toward his female employees, and his sexual objectification of them." Id. at 1480. This logic, which was applied in Heyne to a quid pro quo sexual harassment claim, is even more compelling in a hostile work environment suit (such as Hurley's), as the Heyne district judge noted.

Numerous other courts have concluded that testimony by other members of the plaintiff's protected class is admissible. See, e.g., Vinson v. Taylor, 243 U.S. App. D.C. 323, 753 F.2d 141 (D.C. Cir. 1985), aff'd in part and rev'd. in part sub nom, Meritor Svc. Bank v. Vinson, 477 U.S. 57, 91 L. Ed. 2d 49, 106 S. Ct. 2399 (1986); Hall v. Gus Const. Co. Inc., 842 F.2d 1010, 1015 (8th Cir. 1988); Phillips v. Smalley Maintenance Services, Inc., 711 F.2d 1524, 1532 (11th Cir. 1983); Webb v. Hyman, 861 F. Supp. 1094, 1111 (D.D.C. 1994); Bundy v. Jackson, 205 U.S. App. D.C. 444, 641 F.2d 934 (D.C. Cir. 1981).

On March 18, 1999, the Third Circuit affirmed Hurley with regard to the admission of evidence related to discrimination against others in the workplace. The Third Circuit also wrote a long and detailed rationale for the admission of such evidence. ("[A] plaintiff may show that, while she was not personally subjected to harassing conduct, her working conditions were nonetheless altered as a result of witnessing a defendant's hostility towards other women at the workplace.") The Third Circuit concluded:

Evidence of other acts of harassment is extremely probative as to whether the harassment was sexually discriminatory and whether the ACPD knew or should have known that sexual harassment was occurring despite the formal existence of an anti-harassment policy.

Hurley v. The Atlantic City Police Dept., 1999 U.S. App. LEXIS 4582 (3d. Cir. March 18, 1999)

## PUNITIVE DAMAGES

It is well settled law in New Jersey that punitive damages may be awarded under the NJLAD. Johnson v. Ryder Truck Rentals, 256 N.J. Super 312, 313 (Law Div. 1993). Discrimination is, in and of itself, outrageous conduct and an expression of malice, and "is particularly repugnant in a society that prides itself in judging each individual by his or her own merits." Levitson v. Hall Inc., 868 F.2d 558, 562, (3d Cir. 1981)(interpreting a NJLAD Case).

With regard to sexual harassment claims, a Plaintiff must show more than mere negligence in order to establish a claim for punitive damages. Lehmann v. Toys 'R' Us, 132 N.J. 587, 624 (1993). Hence, the employer should be liable for punitive damages only in the event of participation by upper management or willful indifference. *Id.* at 625. Evidence of other claims of sexual harassment are discoverable in order to determine if punitive damages are appropriate, and to determine whether others were retaliated against. Connolly v. Burger King Corp., *supra*, at 349.

The Third Circuit eloquently explained the importance of punitive damages in discrimination cases:

Indeed by its very nature, discriminatory conduct "embodies ideas of intent and wrongdoing that seem to fit the ordinary definition of wanton or malicious conduct." See Weiss [Weiss v. Parker Hannafin, Corp.], 747 F.Supp. 1118 (D.N.J. 1990), *supra*, 747 F. Supp. at 1136. Thus logic would dictate that conduct which rises to the level of unlawful discrimination is precisely the type of "evil-minded act" that could support an award of punitive damages. It would not be unreasonable for a finder of fact to conclude that such conduct is outrageous and deserving of punitive damages. Moreover, such punitive damage awards will serve to deter and punish wrongdoers, and further the Legislature's goals of alleviating the personal hardships suffered by victims of discrimination." Johnson v. Ryder Truck Rentals, Inc., 256 N.J. Super. 312, 317.

## RETALIATION

Any remedial measure that leaves the complainant worse off is ineffective per se. See Guess v. Bethlehem Steel Corp., 913 F. 2d 463, 465 (7th Cir. 1990). In Guess, the Circuit Court addressed a claim where the Plaintiff claimed that she was transferred because she complained of sexual harassment. The Court stated:

Guess argues that one of the corrective steps that Bethlehem took, even if effective, was improper: to transfer her rather than the foreman out of the department in which the incident occurred, in order to reduce the chances of a recurrence. She relies on a simple syllogism, which while we cannot find it in any previous case seems to state the law correctly: A remedial measure that makes the victim of sexual harassment worse off is ineffective per se. A transfer that reduces the victim's wage or other remuneration, increases the disamenities of work, or impairs her prospects for promotion makes the victim worse off. Therefore such a transfer is an inadequate discharge of the employer's duty of correction. Guess v. Bethlehem Steel Corp., *Id.* at 465. (Emphasis added)

Thus, discovery of the treatment of others that have complained may be extremely relevant and useful in determining whether the employer takes steps to prevent further discrimination without retaliating against the complainant or placing the complainant in a worse condition than he or she was prior to the complaint.



## SAMPLE INTERROGATORIES

Below are model interrogatories designed to request and acquire information related to other acts and complaints of discrimination by the employer. These interrogatories specifically focus on a claim of sexual discrimination and sexual harassment, but can be modified for any type of discrimination claim. Investigation of Plaintiff's Complaint:

1. Identify all employees and former employees interviewed in the course of defendants' investigation of the allegations contained in plaintiff's Complaint, including defendants' investigation of such allegations prior to the filing of this lawsuit.
2. For each person identified in the preceding Interrogatory, state:
  - a. Their name, address and telephone number;
  - b. The date, time and place he/she was interviewed;
  - c. The name of each person who interviewed him/her;
  - d. The reason he/she was interviewed;
  - e. The subject about which he/she was interviewed.

### Other employee complaints of discrimination

3. Please identify all employee complaints of sexual harassment/discrimination alleged to have taken place which defendants received notice of during the relevant time period, and state:
  - a. The name and title of each employee whose conduct triggered the complaint;
  - b. The name and title of the employee(s) making the complaint;
  - c. The acts or circumstances of each complaint;
  - d. The date(s) of these acts or circumstances;
  - e. The actions taken by defendants in response to each complaint;
  - f. The name and title of the person responsible for investigating each complaint;
  - g. Management's final actions on each complaint, including a specification of all disciplinary actions taken;
  - h. Produce all documents reflecting your answers to subparagraphs a. through g.
4. Please describe all actions taken by defendant employer to prevent sexual harassment/discrimination from occurring in the workplace during the relevant time period.
5. Please identify all employees or member of supervisory or managerial staff counseled or disciplined from 1991 through the present date in regard to sexual harassment or discrimination, a sexual relationship or attempted relationship with a co-worker, and state:
  - a. The nature and substance of the counseling or discipline;
  - b. The name, title and sex of the employee counseled or disciplined;
  - c. The name, title and sex of the other involved employee;
  - d. The date of the counseling or discipline;

- e. All follow-up action by management;
  - f. Provide all documents reflecting your answers to subparagraphs a. through e.
6. Please state whether the defendant employer has ever received a complaint of sexual harassment/discrimination against any of its authorized agents/employees.
  7. If your answer to the preceding Interrogatory is in the affirmative, please state:
    - a. The name, title and sex of each applicant or employee who made such a complaint;
    - b. The date of each complaint;
    - c. A description of the complaint and its basis;
    - d. A description of the investigation and resolution of each complaint;
    - e. The name, title and sex of each person responsible for resolving each complaint;
    - f. The current employment status of each person filing the complaint.
  8. Does the defendant employer or any of the defendant employer's supervisory personnel have knowledge or indications of sexually harassing statements, stereotypical comments, ridicule, or joking in the workplace?
  9. If your answer to the preceding Interrogatory is in the affirmative, please state:
    - a. The acts or circumstances involved;
    - b. The dates of their occurrence;
    - c. The location of their occurrence;
    - d. The names and titles of those involved;
    - e. The names and titles of those responsible for investigating the acts and/or circumstances;
    - f. The date and a description of action taken by management in response to the acts and/or circumstances;
    - g. Whether the acts and/or circumstances continued after management's response.
  10. Does the defendant employer or any of the defendant employer's supervisory personnel have knowledge or indications of inappropriate comments regarding or related to the defendant employer's (customers/clients/patients), made by (the harasser)?
  11. If your answer to the preceding Interrogatory is in the affirmative, please state:
    - a. The acts or circumstances involved;
    - b. The dates of their occurrence;
    - c. The location of their occurrence;
    - d. The names and titles of those involved;
    - e. The names and titles of those responsible for investigating the acts and/or circumstances;
    - f. The date and a description of action taken by management in response to the acts and/or circumstances;
    - g. Whether the acts and/or circumstances continued after management's response.
  12. Please state whether any employee/agent of the defendant employer has ever complained orally or in writing about sexual harassment/discrimination against them by (the harasser).

13. If the answer to the preceding Interrogatory is in the affirmative, for each complaint, please state the following:
  - a. Where the complaint originated;
  - b. The date the complaint was made;
  - c. The name, title, if applicable, and address of the person who complained;
  - d. Provide details regarding what specific behavior was complained of, including the time period in which the behavior occurred;
  - e. Whether the complaint was oral or in writing;
  - f. If the complaint was oral, state the name, title, and address of any and all persons to whom the complaint was made, were present when the oral complaint was made, or who have knowledge of the oral complaint, and provide copies of any and all notes taken, or other documentation of the oral complaint;
  - g. If the complaint was in writing, state the name, title and address of any and all persons to whom the written complaint was addressed, or who have knowledge of the written complaint, and provide copies of any and all letters or other documentation of the written complaint;
  - h. Whether any investigations were conducted as a result of the complaint;
  - i. If investigations were conducted, provide the name, title and address of the person or persons who conducted the investigation, and provide copies of any and all notes, reports, or other documentation regarding the investigation and any and all findings;
  - j. Whether a company policy exists with regard to sexual harassment/discrimination by employees of the defendant employer;
  - k. If a company policy exists, please provide a copy of the entire company policy, including but not limited to disciplinary procedures against employees for sexual harassment/discrimination;
    1. Whether any disciplinary action was taken against (the harasser(s)), at any time as a result of a complaint against him/her for sexual harassment/ discrimination;
    1. If disciplinary action was taken against (the harasser(s)), as a result of sexual harassment/discrimination complaints, provide specific details regarding what action was taken, and provide copies of any and all documentation of the disciplinary action.
14. Please state whether any customer/client/patient of the defendants has ever complained orally or in writing about inappropriate conduct or comments of a sexual nature toward them from (the harasser).
15. If the answer to the preceding Interrogatory is in the affirmative, for each complaint, please state the following:
  - a. Where the complaint originated;
  - b. The date the complaint was made;
  - c. The name, title, if applicable, and address of the person who complained;
  - d. Provide details regarding what specific behavior was complained of, including the time period in which the behavior occurred;
  - e. Whether the complaint was oral or in writing;

- f. If the complaint was oral, state the name, title, and address of any and all persons to whom the complaint was made, were present when the oral complaint was made, or who have knowledge of the oral complaint, and provide copies of any and all notes taken, or other documentation of the oral complaint;
  - g. If the complaint was in writing, state the name, title and address of any and all persons to whom the written complaint was addressed, or who have knowledge of the written complaint, and provide copies of any and all letters or other documentation of the written complaint;
  - h. Whether any investigations were conducted as a result of the complaint;
  - i. If investigations were conducted, provide the name, title and address of the person or persons who conducted the investigation, and provide copies of any and all notes, reports, or other documentation regarding the investigation and any and all findings;
  - j. Whether a company policy exists with regard to inappropriate conduct towards a customer/client/patient by employees of the defendant employer;
  - k. If a company policy exists, please provide a copy of the entire company policy, including but not limited to disciplinary procedures against employees;
    - 1. Whether any disciplinary action was taken against (the harasser(s)), at any time as a result of a complaint against him for inappropriate conduct towards a customer/client/patient;
    - l. If disciplinary action was taken against (the harasser(s)) as a result of his/their inappropriate conduct towards a customer/client/patient, provide specific details regarding what action was taken, and provide copies of any and all documentation of the disciplinary action.
  - m. Please state the name, title, sex, and most current address available of every employee of the defendant employer who has complained orally or in writing to the defendant employer, through its agents, Union or grievance procedures with regard to sexual harassment/discrimination or inappropriate conduct or comments of a sexual nature during the relevant time period.
16. For each person listed in the answer to the preceding Interrogatory, please state:
- a. Where the complaint originated;
  - b. The date the Complaint was made;
  - c. The name, title, sex, and address of the person who complained;
  - d. Provide details regarding what specific behavior was complained of, including the time period in which the behavior occurred;
  - e. Whether the complaint was oral or in writing;
  - f. If the complaint was oral, state the name, title, and address of any and all persons to whom the complaint was made, were present when the oral complaint was made, or who have knowledge of the oral complaint, and provide copies of any and all notes taken, or other documentation of the oral complaint;

- g. If the complaint was in writing, state the name, title, and address of any and all persons to whom the written complaint was addressed, or who have knowledge of the written complaint, and provide copies of any and all letters or other documentation of the written complaint;
  - h. Whether any investigations were conducted as a result of the complaint;
  - i. If investigations were conducted, provide the name, title and address of the person or persons who conducted the investigation, and provide copies of any and all notes, reports, or other documentation regarding the investigation and any and all findings;
  - j. Whether any disciplinary action was taken as a result of each complaint alleging sexual harassment/ discrimination and/or inappropriate behavior of a sexual nature;
  - k. If disciplinary action was taken against the alleged harasser as a result of a complaint of sexual harassment/discrimination or inappropriate behavior of a sexual nature, provides specific details regarding what action was taken, and provide copies of any and all documentation of the disciplinary action;
12. If disciplinary action was not taken against the alleged harasser as a result of a sexual harassment/discrimination complaint or a complaint of any inappropriate behavior of a sexual nature, provides specific details regarding why action was not taken, and provide copies of any and all documentation supporting the defendant employer's decision.
17. Has any EEOC claim or claim with any State Civil Rights agency ever been filed against the Defendant?
18. If the answer to preceding Interrogatory is in the affirmative, please state with reference to each claim filed against the Defendant:
- . The name, address, sex, age, race, national origin, and religion of the person who filed the claim;
  - a. The employment history with the Defendant of the person who filed the claim, including job titles and dates;
  - b. The date the claim was filed;
  - c. A summary of the claim filed;
  - d. A description of all the claims filed.
19. Has any employee or applicant for employment ever filed an internal complaint with the Defendant alleging that the Defendant had discriminated?
20. If the answer to the preceding Interrogatory is in the affirmative, with reference to each complaint of discrimination please:
- . State the name, age, sex, race, national origin and religion of the person who filed the complaint;
  - a. State the employment history with the Defendant with the person who filed a complaint, including job titles and dates;
  - b. State the date the Complaint was filed;
  - c. Describe the charges made in the Complaint;
  - d. Describe all actions taken on the basis of the Complaint;
  - e. Attach a copy or state where and when counsel may examine a copy of the Complaint;

21. Has any employee or applicant for employment ever filed a formal Union Grievance alleging that the Defendant had discriminated?
22. If your answer to the preceding Interrogatory is in the affirmative, with reference to each such grievance, please:
  - . State the name, address, sex, age, race, national origin, or religion of the person who filed the Complaint;
  - a. State the employment history with the Defendant of the person who filed the Complaint including job titles and dates;
  - b. State the date the complaint was filed;
  - c. State the name and address of the Union;
  - d. Describe the bargaining units involved;
  - e. Describe the charges made in the grievance;
  - f. Describe all actions taken on the basis of the grievance;
  - g. Attach a copy or state when and where counsel may examine a copy of the grievance;
23. Has any employee or applicant for employment ever filed a complaint with any Federal, State or Local Government Agency alleging that the Defendant had discriminated?
24. If your answer to the preceding interrogatory is in the affirmative, please state:
  - . State the name, address, sex, age, race, national origin, or religion of the person who filed the Complaint;
  - a. State the employment history with the Defendant of the person who filed the Complaint including job titles and dates;
  - b. State the date the complaint was filed;
  - c. State the name and address of the Union;
  - d. Describe the bargaining units involved;
  - e. Describe the charges made in the grievance;
  - f. Describe all actions taken on the bases of the grievance;
25. Has any employee or applicant for employment ever filed a lawsuit in State or Federal Court against the defendant alleging that the Defendant had discriminated?
26. If the answer to the preceding Interrogatory is in the affirmative, with reference to each complaint of discrimination please:
  0. State the name, age, sex, race, national origin and religion of the person who filed the complaint;
  1. State the employment history with the Defendant with the person who filed a complaint, including job titles and dates;
  2. State the date the Complaint was filed, the Court in which the Complaint was filed, and the docket number of the lawsuit;
  3. Describe the charges made in the Complaint;
  4. Please state whether the final disposition of such lawsuit, and the amount of any settlement or verdict, if any;
  5. If any such lawsuit is still pending, please state the name and address of the Plaintiff's counsel;
  6. Attach a copy or state where and when counsel may examine a copy of the Complaint;

27. Please state the name and title of each and every employee that the Defendant claims is part of its litigation control group, as defined by R.P.C. 1.13.

## DOCUMENT REQUESTS

1. Any and all documents which evidence or mention complaints of sexual harassment or inappropriate behavior of a sexual nature in the workplace on the part of the Plaintiff, including any investigative documents in the possession of the Defendants.
2. Any and all documents related to complaints of sexual harassment or inappropriate conduct of a sexual nature made by any employee of the Defendants from 1991 to present.
3. Any and all documents relating to investigation and actions taken in response to complaints of sexual harassment or inappropriate conduct of a sexual nature against the Defendants, or its employees or agents from 1991 to present.
4. Any and all documents relating to actions taken by Defendants against individuals when a complaint of sexual harassment or inappropriate behavior of a sexual nature from 1991 to present.
5. Any and all documents relating to any actions, including lawsuits, taken against Defendants, with regard to any complaints ever made to the Defendant employer regarding discrimination on the part of the harasser(s), or sexual harassment or inappropriate sexual conduct on the part of the harasser.
6. Any and all documents in the possession or control of Defendants relating to any complaints made by the Plaintiff to the Defendant employer, or its franchisees or agents, relating to any inappropriate conduct of a sexual nature by your employees or agents. This request specifically includes all complaints, investigative notes, and other documents relating to the Plaintiff's Complaint about the harasser(s).
7. Any and all documents which mention, evidence, or refer to complaints made by anyone about inappropriate conduct of a sexual nature of your employees. As used in this request, the term "complaints" is defined as any statement evidencing displeasure, grief, pain, regret, censure, resentment, discontent, lament or faultfinding.
8. Any and all documents which evidence, refer or relate to any improper conduct of a sexual nature alleged against the harasser(s).
9. Any and all written statements relating to complaints by anyone alleging improper behavior of a sexual nature against the harasser(s).
10. All minutes and agenda(s) of Defendant employer, from January 1, 1991, through the present date which addressed issues, complaints, investigations, and/or policies relating to sexual harassment/discrimination affecting employees of Defendant employer.
11. All memoranda, letters, postings, training handbooks presented to the Defendant employer's employees from January 1, 1991, through the present date which addressed issues, complaints, investigations, and/or policies relating to sexual harassment/discrimination affecting employees of the Defendant employer.

12. Defendants' complete investigation file on the Plaintiff's sexual harassment allegations, including notes of interviews and statements obtained from other witnesses and/or alleged harasser.
13. Any and all documents related to complaints of inappropriate conduct or comments of a sexual nature toward a customer/client/patient made by any employee or patient of the Defendants from 1991 to present.
14. Any and all documents relating to investigation and actions taken in response to complaints of inappropriate conduct or comments of a sexual nature toward a customer/client/patient against the Defendants, or its employees or agents from 1991 to present.
15. Any and all documents relating to any actions taken against the harasser, with regard to any complaints ever made to the Defendant employer regarding inappropriate conduct or comments of a sexual nature toward a patient on the part of the harasser.
16. Any and all documents which mention, evidence, or refer to complaints made by anyone about inappropriate conduct or comments of a sexual nature toward a customer/client/patient by the harasser.
17. Any and all written statements relating to complaints by anyone alleging inappropriate conduct or comments of a sexual nature toward a patient against the harasser.
18. Any and all documents evidencing lawsuits or administrative actions taken against the defendant alleging discrimination.