

An Employer Must Take Certain Steps to Assert an Affirmative Defense Against Harassment or Discrimination

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If employers are going to have an affirmative defense to a claim of harassment or discrimination, pursuant to the New Jersey Supreme Court case of *Aguas v. State of New Jersey*, 220 N.J. 494 (2015), an employer must:

- Create an anti-discrimination/anti-harassment policy (make it an employee's obligation to report problems);
- Document problems and have accurate evaluations;
- Circulate the policy, provide training on discrimination and harassment and the policy;
- Answer any questions about the policy;
- Follow the policy – conduct an appropriate investigation; and
- Don't retaliate, including through constructive discharge.

We regularly provide annual anti-harassment/anti-discrimination training for our clients. The training takes approximately 1 hour and 15 minutes for the employees and an additional 15 minutes for supervisors. The training uses PowerPoint, lecture, videos and group interaction.

Attorney

- Tracy Armstrong