Increased Exposure Under New York City's Human Rights Law Continues

The closely followed *Faruqi* trial serves as a reminder of the risk that employers face when proceeding to trial of a hostile work environment case under the New York City Human Rights Law ("NYCHRL"). In *Marchuk v. Faruqi & Faruqi LLP*, Alexandra Marchuk alleged that Juan Monteverde, a partner in the firm, repeatedly harassed her when she was a first-year litigation associate and sexually assaulted her on the night of the firm's holiday party. Brother and sister firm co-founders, Nadeem and Lubna Faruqi, and Monteverde contended that Marchuk was obsessed with Monteverde, that all sexual interactions between the two were consensual, and that the alleged sexual assault did not happen. On February 5, 2015, a jury found the law firm and Monteverde liable on the hostile work environment claims under the NYCHRL, but rejected similar claims under Title VII and the New York State Human Rights Law ("NYSHRL"). Marchuk originally sought $2 million in damages but was awarded $90,000 in lost compensation plus $5,000 in punitive damages against the law firm and $45,000 in punitive damages against Monteverde. The jury did not award compensatory damages for emotional distress.

Different standards apply for analyzing hostile work environment claims under the NYCHRL than under Title VII and the NYSHRL. Under Title VII and the NYSHRL, an employee claiming a hostile work environment must show that the alleged misconduct is sufficiently severe or both severe and pervasive in nature to constitute a hostile work environment. In contrast, under the NYCHRL, an employee need only establish that he or she was treated less favorably than other employees because of his or her gender. To state a claim under the NYCHRL, the conduct at issue need only be more than a "petty slight" or "trivial inconvenience." Significantly, the *Faragher /Ellerth* affirmative defense typically available to employers under Title VII and the NYHRL is not available under the NYCHRL. Under this defense, an employer can avoid liability for claims of sexual harassment by a supervisory employee by showing that (1) no tangible employment action occurred, (2) the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (3) the plaintiff unreasonably failed to take advantage of any preventive or corrective actions. Although employers may not always be able to escape complete liability with the *Faragher /Ellerth* defense, they may be able to reduce or mitigate the amount of damages awarded by demonstrating at trial that they regularly have trained supervisory and non-supervisory employees on anti-harassment policies, have effective and well disseminated internal complaint procedures, and investigate promptly incidents of workplace harassment.

Frequent training of supervisors is recommended to ensure their familiarity with the NYCHRL standards and to ensure their compliance therewith.

Please feel free to contact Ana Shields or John Porta at Jackson Lewis P.C. with any questions.