

Dotted Line: How to conduct business in a world of discrimination and harassment claims, *ConstructionDive*, ft. Erik Ortmann

Erik Ortmann, partner in Kaufman Dolowich & Voluck's Long Island office, was featured in Kim Slowey's article published in *ConstructionDive*.

Sexual harassment and discrimination claims and lawsuits in business environments and the workplace have been at the forefront of national news during the past year, and the construction industry is no exception.

In May, Linda Dugue, a female carpenter, sued her former employer, Farmingdale, New York-based Pabco Construction Corp., alleging that she was fired because of her gender and that during her employment she and other women were not given the same opportunities for overtime work, training or career advancement. Dugue, who filed an official complaint with her union, said she was also the target of disparaging and condescending remarks claiming that women did not belong on construction job sites.

The case is headed for a jury trial, according to the latest documents filed with the U.S. District Court for the Southern District of New York, although a July letter from Pabco's attorney to the court indicated that both sides were willing to resolve the issue through mediation.

Attorney Erik Ortmann with Kaufman Dolowich Voluck in New York said most construction cases he's seen have been centered on gender discrimination or sexual harassment. Women, he said, tend to be isolated on a construction site, and don't have as many mentors or the same support system as their male counterparts. Threats range from inadequate sanitary facilities to being assigned tasks with the goal of physical exhaustion. In at least one severe case recently, he said, women were put in physical danger by someone intentionally dropping a brick near their work position. Because there are so few women in the industry, Ortmann said, they can be more easily targeted.

In-house policies and procedures

The best defense against discrimination or harassment is prevention. A contractor's best tool is a robust employee policy, Ortmann said, which puts in place clear rules to foster a non-hostile work environment. Equally as important, he said, is to make sure any such workplace policy also includes a complaint mechanism and a clear outline of the potential disciplinary actions violators could face. "[Contractors] have to implement the policy and staff it with people who are going to be accountable," he said.

Follow-through is also critical, Ortmann said. If employees who engage in discrimination or harassment are not disciplined, then the policy could end up being just a stack of paper that can offer a company little in the way of protection from legal action.

Contract clauses

Besides protection from employee claims, contractors need to protect themselves from subcontractors' discriminatory actions, which they can do through contracts. Anti-discrimination policies, Ortmann said, are usually part of public contracts and often included in private commercial contracts when dealing with large companies or institutions.

Sometimes contractors see these in their prime contract with the owner. In that case, the contractor would normally incorporate the requirements by reference — or explicitly — into contracts with subcontractors. "The general idea," Ortmann said, "is that contractors are expected to abide by applicable laws, including those designed to prevent discrimination."