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Harassment Training Should Not Be Ignored

Michael S. Lavenant

Editor's note: Currently, several states (California, Colorado, Connecticut, and Maine) have laws that require private employers to provide sexual harassment training. Massachusetts, New Jersey, Rhode Island, and Vermont "encourage" private and public employers to provide such training. In addition, many states require that their state agencies conduct sexual harassment training. Because California's training requirements are the most onerous, this "California Corner" column addresses those requirements, for California employers, and for employers from out of state who do business in California. Even in states that do not have such requirements, harassment training is essential to preventing and successfully defending against harassment claims under federal and all state laws. Constangy offers both live and interactive, computer-based harassment training that complies with all state and federal requirements. If you have never provided harassment training, or if your training needs an update, please contact the Constangy attorney of your choice.

On September 29, 2004, Governor Arnold Schwarzenegger signed into law AB 1825, and California joined Connecticut and Maine as one of the first states to require employers to provide comprehensive sexual harassment prevention training to all of its supervisory personnel. This new law required each employer with more than 50 employees to engage in management training for all current supervisors by January 1, 2006. Newly appointed or hired supervisors were required to receive training within six months of placement. The training requirement was not a one-time obligation, but mandated that supervisors repeat a training course every two years thereafter. Maine's and Connecticut's laws do not require retraining.

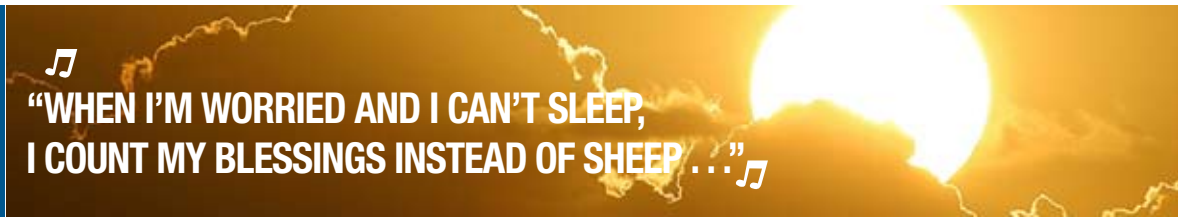
Although the California statute requires training only for organizations with more than 50 employees, Constangy has always encouraged businesses to be proactive and conduct training regardless of their size. This advice is given for several reasons. First, AB 1825 affects employers with 50 or more employees, including agents or contractors who perform services. The definition of "employee" is broad and includes full-time, part-time and temporary workers. We recommend that a business also count any unincorporated independent contractor that is providing services to the covered employer. Thus you may have only 40 direct hires, but if you contract with 10 individuals, you now meet the threshold required for mandatory training. There is no requirement that the 50 employees or contractors work at the same location, or that they all work or reside in California.

Another reason that we encourage training even when not technically required is that it greatly assists in any defense to a harassment claim. Under federal law (Title VII), an employer can avoid liability for harassment of an employee by a supervisor if (1) the employer took reasonable steps to prevent or correct the harassment, and (2) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer. This is the so-called *Faragher/Ellerth* affirmative defense, based on companion cases decided by the U.S. Supreme Court in 1998. Thus, a harassment claim brought under Title VII could be defended, in part, by the employer's stance on proactive training. Conversely, a harassment claim can be lost (or settled for an unacceptably high amount) because the employer gave harassment training low priority.

Although the *Faragher/Ellerth* affirmative defense is not available under California state law, California offers a limited "Avoidable Consequences Doctrine" defense that encourages employers to comply with training requirements. The defense under the FEHA (named for the Fair Employment and Housing Act, which is the

(continued on page 3)

from the
EDITOR'S DESK



This has been a tough year for many, and in many ways. However, in the realm of labor and employment law, it could have been so much worse. Although employers will need to remain politically alert, it seems appropriate that we take a few minutes to give thanks.

We still don't have an EFCA. Many were sure that the Employee Free Choice Act would be the law in 2008 or, at the latest, 2009, as soon as President Obama came into office. So far, that has not happened. Even if some version of this law passes at some point, predictions are that the card-check requirement will be gone, which is a big improvement over the version we expected back in 2008.

EEOC charge filings took a dip in 2009. It wasn't a big dip, but the worst year for charges of discrimination at the U.S. Equal Employment Opportunity Commission was 2008, not 2009. It's not entirely clear why this has been the case, but let us be grateful.

Courts are construing Lilly Ledbetter narrowly. Just about every court that has faced the issue, including most notably the U.S. Court of Appeals for the District of Columbia Circuit on March 1, is holding that the Lilly Ledbetter Fair Pay Act, which extends the charge-filing period for certain discrimination claims based on compensation, does not apply to failures to promote, demotions, failures to hire, or terminations, even though such "discrete employment decisions" clearly have an effect on one's future compensation. Absent more legislation (always a possibility, unfortunately) or an expansive reading of the Act by other appellate courts or the Supreme Court, it does not appear that we'll be seeing the groundswell of litigation over stale claims of discrimination that we had initially feared.

The Obama Administration is really wired. Since Obama's inauguration, most of the government websites have been significantly revamped and are now more user-friendly—yes, even for employers! Material is arranged in a more logical fashion, and the interfaces are more attractive and easy to follow. The Department of Labor and EEOC websites, in particular, are much improved, and whitehouse.gov, where news straight from the President's desk is posted, is very helpful to those who want to follow the latest developments.

We now return to our regularly-scheduled complaining.

Robin Shea, Editor

©"Count Your Blessings (Instead of Sheep)" words and music by Irving Berlin.

We'd love to hear your feedback. If you have any comments or suggestions, please feel free to contact Robin Shea at our Winston-Salem office.

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PAY LATER *(continued from page 1)*

California anti-discrimination law) requires the employer to show the following:

First, that it took reasonable steps to prevent and correct workplace harassment. This step can be accomplished by issuing a policy prohibiting harassment, distributing the required posters, and engaging in the above-mentioned training for all supervisors and some training for all employees.

Second, that the employee unreasonably failed to use the preventive and corrective measures that the employer provided.

These, of course, are the same two showings that an employer must make to prevail on a *Faragher/Ellerth* defense under Title VII. However, the avoidable consequences doctrine defense also requires a showing that the internal procedures would have worked had they been followed. In deciding whether an employer has made this third showing, the trial court may ask, for example, "Does the employer have a policy against retaliation for complaints, and is it strong enough?" "Does the employer provide the regular training to supervisors on how to receive, investigate and resolve employee complaints?" and "Has the employer 'consistently and firmly' enforced the policy and training requirements in the past?" Even if the Court doesn't probe, you can be sure that plaintiffs' counsel will make a lack of training, or inadequate training, a major focus.

Any "no" answers to these questions may mean the defense won't work! Thus, under FEHA, employers with policies that work better on paper than in the real world will remain vulnerable. The only way to properly implement a no-harassment policy is to provide comprehensive, regularly-recurring supervisor training – for all levels of management, from frontline supervisors all the way to the Board of Directors.

The next main topic of the California training regulations concerns who must conduct the training. The leader must be a trainer or educator who has legal education coupled with practical experience with harassment, discrimination and retaliation prevention. Based on these new regulations, many Human Resources personnel or consultants, or general counsel or corporate attorneys, may not qualify – either because they lack the requisite legal training, or because they lack experience in the areas of discrimination, harassment, and retaliation. The regulations say that it is the employer's burden to establish that the training material as well as the individual instructor meets the criteria of the regulations. In addition to failing to meet the statutory requirements, it has been our experience that plaintiffs' counsel will use an instructor's lack of knowledge in its prosecution of harassment cases. Plaintiffs will argue that use of an inexperienced trainer shows that the employer did not take seriously its obligation to train its employees in harassment avoidance.

Many companies and law firms have recently been developing harassment training programs involving PowerPoint presentations, DVD presentations, or internet or e-learning situations. The California regulations allow e-learning and "webinars," but the employer is responsible for making sure that the quality of the training programs is adequately documented.

Finally, the regulations answer a question regarding supervisors who changed employers after receiving annual training and whether they can transfer their certificates to the new employer. Transfer is allowed; however, the current employer bears the burden of establishing that the prior training complied with the regulations. Because of this, we recommend that you require retraining if you have any question about the quality or compliance of the prior training.

Constangy attorneys conduct live harassment prevention training, and the firm also offers an interactive, computer-based training program that complies with the California regulations as well as the Connecticut and Maine laws. Our training is presented in "real-world" terms (not legalese) so that employees of all levels can understand their rights and duties, and it is designed to hold their interest.

If you have any questions concerning your obligation to conduct training and our qualifications to service your training needs, please do not hesitate to contact us.

Michael Lavenant (Ventura County, CA) practices in the areas of litigation prevention and defense, and has provided harassment training to a wide variety of clients and businesses.

Employers with harassment policies that work better on paper than in the real world will remain vulnerable. The only way to properly implement a no-harassment policy is to provide comprehensive, regularly-recurring supervisor training—for all levels of management, from frontline supervisors all the way to the Board of Directors.

GETTING TO KNOW US

ELLEN KEARNS *(**Boston, MA**, wage and hour, labor relations, and labor and employment litigation prevention and defense)* is the head of Constangy's Boston Office. She received her bachelor's degree in Mathematics from Regis College and her law degree from Boston College. Before attending law school, Ellen taught math to elementary, junior high and senior high school students. Since becoming an attorney, Ellen has written numerous articles and made presentations concerning many aspects of employment law. She has been named one of the top 50 Female Massachusetts Super Lawyers, as well as in *Who's Who Legal USA*, *Chambers USA: America's Leading Lawyers for Business*, and *The Best Lawyers in America*. She also received the Cushing-Gavin Award in 1993 for excellence in Labor-Management Relations and the Lelia J. Robinson Award in October 2006 from the Massachusetts Women's Bar Association for her contributions to women lawyers. Ellen's hobbies include biking; cheering for the Red Sox, Patriots and Celtics; and travelling, especially with her large family, consisting of 17 nieces and nephews and 18 grand-nieces and -nephews. Ellen also played women's rugby for 14 years and has played "scrum half" in seven countries.

MICHAEL LAVENANT *(**Ventura County, CA,** wage and hour, and employment litigation prevention and defense)* received his bachelor's degree in Business Administration from California State University–Fullerton. He then went to Southwestern University School of Law to earn his law degree, where he was Member and Chairman of the Hispanic Law Student Association, Member and Vice President of the Criminal Law Society, Lieutenant Commissioner of Academic Affairs, and recognized in *Who's Who Among Students in American Universities and Colleges*. Michael is very involved in his community, currently serving on the Boards of Directors of such organizations as the Camarillo Chamber of Commerce, the Camarillo Ranch Foundation, and St. Johns' Hospitals Community Board – Ventura County. Also, in 2006 he was named among the "40 under 40" up-and-coming businessmen in San Luis Obispo, Santa Barbara and Ventura counties by the Pacific Coast Business Times. This year, Michael has been a Camarillo Top Ten Award Recipient for Volunteer of the Year and a Camarillo Chamber of Commerce Ken Cunningham Award recipient. Before choosing to practice law, Michael worked as a bartender. In his spare time, he can be found playing golf, tennis and spending time with his family. Michael married his high school sweetheart and together, he and Dana have two daughters and one son.

KITTY BOYTE *(**Nashville, TN,** workers' compensation)* received her bachelor's degree from Vanderbilt University, her Masters degree from the University of Tennessee, and her law degree from the Nashville School of Law. Kitty joined Constangy in May of 2009 and practices mainly in the area of workers' compensation. She is a guest lecturer on workers' compensation at the Nashville School of Law and is a member of the Workers' Compensation Advisory Council, which is charged with changing the workers' compensation laws in Tennessee. Kitty is a member of the Junior League of Nashville, Franklin Road Academy Athletic Boosters Club, and the Franklin Road Academy Friends of the Arts Board.

ROB BERNSTEIN *(**St. Louis, MO and Princeton, NJ**, labor relations and employment litigation prevention and defense)* is the head of the firm's new St. Louis and Princeton offices. Rob has 27 years of experience handling all aspects of labor and employment law, including class and collective actions, and has represented multinational and domestic corporations on a regional and national basis. Rob received his bachelor's degree with honors and his law degree from Georgetown University, and is a widely published writer on employment law topics. He has also been selected for inclusion in the National Registry of Who's Who, and he is a member of the LexisNexis Martindale-Hubbell Legal Advisory Board and Chair of the Board's Labor & Employment sub-committee.

ERIC PROSER *(**Atlanta, GA**, workers' compensation)* is the firm's Workers' Compensation Department Head. He received his bachelor's degree in Political Science with honors from the State University of New York in Albany and his law degree from Emory University. Eric is a frequent writer and speaker on workers' compensation-related topics.This year, Eric was recognized in *Who's Who Among Executives and Professionals*. When he is not practicing law, Eric can be found skiing, traveling with his family, or at the cell phone store replacing a broken or lost cell phone or PDA. He and his wife, Andrea, have two children.

RELIGIOUS DISCRIMINATION, HARASSMENT AND ACCOMMODATION:

Hot Buttons in This Age of Hope and Change

Glen Fagan

Between 1992 and 2007, the number of religious discrimination charges filed with the Equal Employment Opportunity Commission increased 100 percent. Not surprisingly, the number of religious discrimination cases litigated by the EEOC has seen a similar increase. Although the rate of increase has been slower since 2007, it is clear that religious claims are here to stay.

The EEOC under the Bush Administration unanimously approved a new section on religious discrimination, harassment and reasonable accommodation for inclusion in its EEOC Compliance Manual. So far, religious discrimination claims are continuing to increase under the Obama Administration, if for no other reason than because of perceptions of a more hospitable legal climate for charging parties and plaintiffs generally.

Just What Is a "Religion"?

The courts and the EEOC use an extremely broad definition of "religion," which obviously includes the major religions of Christianity, Islam, Judaism, Buddhism, and Hinduism. "Alternate" religions or beliefs that are not part of a formal church or sect, and may only be subscribed to by a few people, including belief systems that seem irrational to others, may also be considered "religions." Under Title VII, "religious" belief also includes ethical, non-theistic beliefs (beliefs that do not include a belief in God) as to what is right and wrong, if those beliefs are sincerely held with the strength of traditional religious views. It is important to note that the law takes no position as to whose beliefs are more "correct," or valid. If the belief system is sincerely held and theistic or quasi-theistic in nature, then it will almost undoubtedly qualify as a religion.

"Religious activity" includes all aspects of religious observance and practice, including attending worship services, praying, wearing religious garb or symbols, displaying religious objects, adhering to certain dietary rules, proselytizing, and refraining from certain activities.

It is unlawful to discriminate against an individual —for example, to refuse to hire, to reject for promotion, or to discipline or discharge – because of his or her religion. What many employers may not realize is that it is also unlawful to discriminate against an atheist or agnostic – the law guarantees everyone the right to believe or not to believe.

(It should be noted that religious organizations' employment decisions related to "ministerial" positions are not subject to review by the courts or the EEOC under Title VII. Therefore, for example, a Baptist church cannot be sued for religious discrimination when it refuses to hire a Catholic chaplain, and a rabbi may lawfully require that his administrative assistant be a practicing Jew.)

In employment litigation, discrimination issues frequently arise in workplaces where the majority of employees are of one religious group and a "minority" employee contends that he or she is shut out, mistreated, or denied opportunities.

Religious Harassment

Religious harassment in violation of Title VII can occur in two ways: (1) an employee is required to abandon, alter or adopt a religious practice as a condition of employment; or (2) an employee is subject to unwelcome statements or conduct based on his or her religion, and the statements or conduct are so severe or pervasive that the employee finds the work environment to be hostile or abusive. When conducting no-harassment training, employers should include a discussion of harassment based on religion.

Although proselytizing ("preaching") is a religious activity that can theoretically be protected by Title VII, the courts are generally willing to allow employers to establish some limits. Certainly an employer should not ban discussions of religion in the workplace that are consensual, courteous and respectful. However,

(continued on page 7)

QQ QUARTERLY QUIZ

Human Resources Manager Sally is doing an internet background check on an applicant for employment. The applicant is qualified, and the background checks are done immediately before conditional offers of employment are made. The background check shows the applicant's complete record (including arrests) for the past 10 years.

This particular applicant's records check shows that he was arrested multiple times for assault on a female but that the charges were dismissed by the alleged victim each time. Then, two years earlier, he was charged with rape. According to the records check, the rape charge was "dismissed by the DA." His only actual conviction was for issuing a worthless check in 2005, and his only penalty was restitution.

This applicant will be working in an office with a number of female employees. Although Sally knows she should not consider arrests, she finds it difficult to ignore the information that she has and believes there is too much "smoke" for there not to be some "fire." Is there anything she can do . . . that would be legal?

(answer on page 6)

QQ ANSWER

(from Quarterly Quiz, page 5)

Generally, an employer should not consider arrest records because doing so has an adverse impact on members of certain minority groups without an overriding benefit to the employer. Having seen the applicant's arrest record and the numerous charges of violence against women, Sally is in a difficult position. If she ignores the record, hires the applicant, and an incident occurs, then the company could be liable for negligent hiring. On the other hand, if she refuses to hire the applicant based on his arrests, she could be liable for race discrimination (assuming the applicant is a member of one of the minority groups that has a statistically higher arrest rate).

Considering the risks on both sides, Sally is probably going to want to err on the side of protecting her employees, especially if the company's overall racial hiring statistics are good. As always, Sally should carefully document the circumstances of the rejection. If the company receives a discrimination charge, it can try to defend on the basis that this was a truly exceptional circumstance.

Sad to say, in the future, Sally may want to consider having a third party perform criminal records checks so that only convictions are disclosed to the company. That will prevent her from being put in this type of dilemma for having "too much information."

EIGHT WAYS TO AVOID AGE DISCRIMINATION LIABILITY*

(without punishing your business)

Robin E. Shea

Age discrimination claims have always been a challenge to defend, but we are expecting the number and "quality" of such claims to increase in the very near future, as the baby boom generation (those born between 1946 and 1964) nears retirement age yet cannot afford to retire. As of 2005, one in four employees was over the age of 50, and it is expected that over-50 workers will be in the majority by the year 2012. Juries have a great deal of sympathy for age discrimination plaintiffs because every juror can envision himself or herself, or his or her parents, getting older and being "put out to pasture" by an employer. For these reasons, it is more important than ever for employers to understand the nuances of age discrimination law so that they avoid liability.

The federal Age Discrimination in Employment Act prohibits discrimination against an employee who is 40 or older. There is no federal prohibition on discrimination against employees because they are under 40. The Older Workers Benefit Protection Act, which amends the ADEA, has specific requirements for severance and settlement agreements where a waiver of ADEA claims is being sought. In addition to the ADEA, many states have laws prohibiting age discrimination, and some prohibit discrimination against the young.

Here are some tips for avoiding age discrimination claims while still retaining the ability to run your business effectively.

1. Keep mum. Avoid making age-related comments, even in fun, and even if you are no spring chicken yourself. Avoid expressions that have become "code phrases" for age discrimination, such as "we need new/fresh blood," "we need to clear out some dead wood," "you can't teach an old dog new tricks," and the like.

2. Don't make stereotypical assumptions based on age. View each employee as an individual with unique talents and shortcomings. Don't assume, for example, that employees past a certain age are afraid of technology or acquiring new skills, or "set in their ways."

3. Make sure your managers know what they're doing in the event of a RIF. In the unfortunate event that your company has to have a reduction in force, make sure that all of the decisionmakers understand the laws dealing with age discrimination and know how to make selections based on demonstrated abilities and performance, rather than unfair assumptions about age. This may require management training before the RIF selections are made. Be especially cautious if your RIF criteria are based on "subjective" criteria rather than unit elimination or relative seniority.

4. Run the numbers. In the event of a RIF that is not based on purely objective criteria and that will affect older employees, be sure to run an "adverse impact analysis" to determine whether there is statistical evidence of age discrimination. If the numbers look problematic, you may want to revisit the selection process while you still can.

5. Don't "suggest" retirement to older employees. It is tempting, especially when envisioning a reduction in force, to suggest to older employees that this would be a good time for them to take retirement. Resist the temptation! Hints about retirement can be viewed as evidence of discriminatory intent. A much better idea is to initially offer a "voluntary" period to all employees in the affected unit.

6. Know the Older Workers Benefit Protection Act. The OWBPA has a number of exacting requirements, especially in the context of a "group termination" (a termination of more than one person at the same time). Although non-compliance does not invalidate a severance agreement in its entirety, it will invalidate the release of age discrimination claims under the ADEA. In RIF situations, this is often the claim that employers want released the most, so non-compliance with the OWBPA often effectively defeats the purpose of offering severance in the first place. This is not a problem only for small employers – big companies like IBM and Sears have had their severance agreements invalidated after the fact, as well. Although the requirements are most complex for group terminations, the OWBPA also applies to any agreement (including a settlement agreement) that purports to release age discrimination claims under the ADEA.

7. Don't let an older work force paralyze you. Many employers have work forces that are generally older, which means that any restructuring or reduction will necessarily affect large numbers of older employees. As long as you have taken the steps described above, don't worry too much about this – you should be able to defend yourself.

8. Don't be afraid to toughen up your standards. Courts recognize that new management often wants to establish new, and sometimes tougher, standards. Indeed, sometimes the same management will want to do this because of changes in business conditions. This is legal, even if it means that long-term employees who have coasted along under the old standards may now find themselves failing to meet expectations. Just make sure you have clearly communicated the change to employees (in writing, of course) and given everyone a fair chance to meet the new standards before taking disciplinary action against or terminating long-term employees.

RELIGIOUS DISCRIMINATION

(continued from page 5)

most employers have experienced the occasional employee who feels that it is his or her mission to "convert" co-workers, whether they like it or not. Courts are generally sympathetic with an employer's need to control an employee who will not take "no, thanks" for an answer, or who tells co-workers (and, sometimes, even supervisors) that they will go to hell if they don't adopt the employee's beliefs.

Religious Accommodation

Like the Americans with Disabilities Act, Title VII requires reasonable accommodation in appropriate circumstances, but the religious accommodation obligation is far less demanding for an employer than the disability accommodation requirement under the ADA. Generally, Title VII requires an employer to reasonably accommodate an employee whose sincerely held religious belief, practice or observance conflicts with a work requirement, unless doing so would pose an undue hardship for the employer. But unlike the ADA "undue hardship," an employer faced with a religious accommodation request need only establish that the proposed accommodation would pose "more than a *de minimis*" cost or burden.

The burden is on the applicant or employee to make the employer aware of the need for the accommodation and that it is being requested due to a conflict between the employee's religion and the employer's work requirements. Determinations regarding whether an accommodation creates an undue hardship must be made on a case-by-case basis, and employers should consider the following factors: the type of workplace; the nature of the employee's duties; the identifiable cost of the accommodation in relation to the size and operating costs of the employer; and the number of employees who will in fact need a particular accommodation.

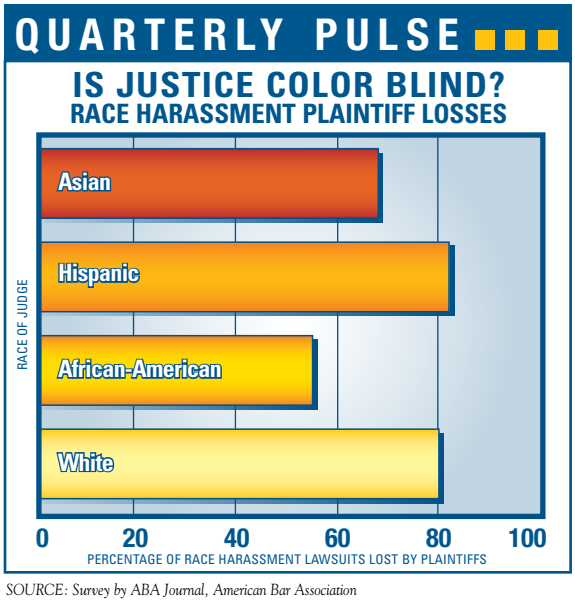
To establish undue hardship, the employer must demonstrate how much cost or disruption the proposed accommodation would involve. Employers cannot rely on potential or hypothetical hardship, but should rely on objective information. For example, an assumption that more people who observe the same religious practice may also request the same accommodation is not evidence of undue hardship, even though this can be a genuine concern.

Costs to be considered include not only direct monetary costs, but also the burden placed on the employer's business. Finally, it is important to remember that if an employer does not grant the employee's preferred accommodation, the employer should, if possible, attempt to provide an alternate accommodation that meets the employee's religious needs. Common methods of religious accommodation include scheduling changes, voluntary substitutes, and shift swaps; changing an employee's job tasks or providing a lateral transfer; making an exception to dress or grooming rules; and accommodating prayer and other forms of religious expression.

Religious discrimination and accommodation issues show no signs of going away under the Obama Administration. Some of the areas to watch include health care workers, including pharmacists, who "conscientiously object" on religious grounds to participating in abortions or dispensing the "morning-after" pill, RU-486, or garden-variety contraceptives; and employees in all industries who refuse to sign on to their employers' "diversity" policies to the extent that the policies require affirmation of "alternative lifestyles" that the employees believe to be sinful.

Glen Fagan (Atlanta, GA) practices in the area of litigation prevention and defense

"Although proselytizing ('preaching') is a religious activity that can theoretically be protected, the courts are generally willing to allow employers to establish some limits. Courts are generally sympathetic with an employer's need to control an employee who will not take 'no thanks' for an answer."



SOURCE: Survey by ABA Journal, American Bar Association

REASON PREVAILS...

Well, why not? Everything else is covered by the FMLA! A federal court in Massachusetts has dismissed a lawsuit under the Family and Medical Leave Act brought by a woman who accompanied her sick husband on a seven-week trip to their native Philippines, where they visited a Catholic priest in the hope of finding a miracle cure. One problem was that the priest, with all due respect, was clearly not a "health care provider" within the meaning of the FMLA. The other problem was that the woman and her husband spent approximately half of their trip visiting relatives and engaging in other social activities.

EEOC owned in sex harassment "class" case. The Equal Employment Opportunity Commission was hit with a $4.5 million attorneys' fee award in the Northern District of Iowa. The EEOC had sued trucking company CRST, alleging that approximately 270 women had been sexually harassed. The judge attacked the EEOC's "sue first and ask questions later" strategy. In a nutshell, the court had earlier dismissed or granted summary judgment with respect to almost all of the women, leaving 67 alleged victims. Then, the judge dismissed the claims against the remaining women because the EEOC had not investigated their claims and had not engaged in the conciliation process. Although CRST did not get all of the $7.6 million it sought, this was still an impressive victory for the company.

AND REASON FLAILS...

Oh, that's bad. *No, that's good.* A New York City police detective held his colleague's gun while the colleague interviewed a suspect. Because the detective's holster already held his own gun, he put the colleague's gun, pointed down, in the waistband of his pants. While still holding the gun, he leaned back in his chair, and allegedly because the chair was broken, it unexpectedly "swiveled back" too far, causing the detective to lose his balance and accidentally pull the trigger. His first bit of good luck was that he shot himself only in the knee. His second bit of good luck was that he won a verdict of approximately $4.5 million from the police department because of the allegedly defective chair. He took disability retirement at age 49 at three quarters of his salary while continuing to work as a sheriff's deputy in South Carolina (no doubt Kiawah Island, Isle of Palms, or Myrtle Beach). The NYPD plans to appeal the $4.5 million verdict.

Generalissimo Francisco Franco is still dead. It has now been a year since the EEOC issued its Notice of Proposed Rulemaking interpreting the Genetic Information Non-Discrimination Act, which took effect in November 2009. Although the EEOC promised a final rule before the effective date of the GINA, we are still waiting.

But he did correctly predict that people in 2010 would colonize Mars, wear silver jumpsuits and drive flying saucers to work. *Newsweek*'s website has posted a column written in 1995 "debunking" the predictions that this new-fangled "internet" would change the world. We know that poor Clifford Stoll must be cringing today at "The Internet? Bah!," but we can't resist a chuckle: "Visionaries see a future of telecommuting workers, interactive libraries, and multimedia classrooms." Yep. "They speak of electronic town meetings and virtual communities." Yep. "Commerce and business will shift from offices and malls to networks and modems." Yep. "Baloney." Uhh . . . never mind.

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