



Human Resource and Management Services

April 2007

HUMAN RESOURCE EXCHANGE

Human resource issues and topics impacting employers

◆ FROM CCH EMPLOYMENT LAW ◆

“9thCir: evidence of child porn admissible in criminal trial”

An employee’s reasonable expectation of privacy in his locked office was subject to the possibility that his employer could consent to a search of its own premises, the Ninth Circuit held. Thus, evidence of child pornography discovered on the employee’s business computer during a late night search of the employee’s office was admissible in the employee’s criminal trial (*US v Ziegler*, 9thCir, January 30, 2007).

“EEOC announces initiative highlighting race, color discrimination”

The EEOC launched an initiative last week to address race and color discrimination. Historically, race-based charges have been the most frequent type of filing with the EEOC’s offices nationwide. The agency’s E-RACE initiative acknowledges that the new face of racial discrimination in the U.S. workplace has become multifaceted—with color discrimination based on skin shade within races trending upward.

◆ FROM EEOC ◆

“Judge approves \$5million settlement”

A federal judge has given final approval to a \$5 million settlement ... against Colorado-based Woodward Governor, asserting that it engaged in illegal discrimination against African-Americans, Hispanics and Asians at its Rockford and Rockton, Ill., facilities with respect to pay, promotions and training, in violation of Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981.

On October 4, 2006, the EEOC sued Woodward (*EEOC v. Woodward Governor Company*, N.D. Ill. No. 06 C 50178) affirming the same charges and adding a charge of discrimination against women, which also violates the Equal Pay Act (EPA). The two suits were consolidated by the court for litigation.

The consent decree settling the suits, ... established a \$2.4 million settlement fund to be shared by minority employees ... and a \$2.6 million settlement fund to be shared by female employees ...

Other terms of the decree include ... a provision that Woodward implement a procedure for investigating complaints of discrimination; a requirement that Woodward

provide training to employees regarding its anti-discrimination policy and complaint procedure; and a term mandating semi-annual reporting to ... the EEOC, and plaintiffs’ counsel regarding promotion decisions, compensation changes, and job training offered to employees.

◆ FROM TEXAS EMPLOYMENT LAW LETTER ◆

“FLSA class-action remover”

William Briggs worked as a mechanic for the Arthur T. Mott Real Estate Co., claimed he wasn’t being paid overtime, and filed an FLSA collective action on behalf of himself and other employees.

Before the trial court determined the appropriateness of sending out notices to other employees to join the lawsuit, Mott said: “We surrender.” It made an offer of judgment to Briggs ... in the amount of \$3,000 ... According to Mott, the \$3,000 exceeded any amount Briggs could recover. And he didn’t dispute that.

Briggs refused the offer. Mott then moved to dismiss the class action ... because there was no controversy for the court to determine ... The court agreed and dismissed the entire lawsuit ... Courts can only hear cases in which there is a controversy. In this case ... Mott nuked the controversy by offering the \$3,000 (which was ultimately refused).

◆ FROM EMPLOYEE TERMINATIONS LAW

BULLETIN ◆

“Six strategies for rescinding job offers”

... Once an offer is made and accepted, few people expect it to be rescinded. When it is, they often wonder if they have legal basis to sue.

Usually, the answer is no as long as the employer can point to legitimate business reasons for the withdrawal... [reasons could be] dramatic shifts in business – perhaps they lost a major account or a deal was just signed to sell the company – or the references didn’t check out.

◆ FROM HR SPECIALIST – TX

EMPLOYMENT LAW ◆

“Teambuilding is good; humiliation is bad”

As part of a morale-boosting exercise, a security company staged employee team competitions. The ‘losing’ teams were spanked with yard signs and forced to eat baby food and wear diapers. At least one employee’s morale wasn’t boosted. She quit over the incidents and sued, alleging sexual harassment.

A jury awarded her \$500,000 in damages for emotional distress and lost wages, plus it slapped an extra \$1.2 million on the company's tab for punitive damages. Two supervisors who concocted the exercise were found personally liable for \$50,000 each. (*California: Orlando v. Alarm One*)

◆ **FROM THE NATIONAL INSTITUTE OF BUSINESS MANAGEMENT** ◆

“Breastfeeding: the next employment right?”

If Rep. Carolyn Maloney (D-NY) has her way, employers would have to comply with yet another federal employment entitlement: the right to breastfeed or express milk for infant feeding. Her bill would make it illegal to discriminate against breastfeeding moms and would give tax incentives to companies to establish sanitary places for employees to breastfeed.

◆ **FROM ABC NEWS** ◆
“No e-mails on Friday”

U.S. Cellular, based out of Chicago and PBD Worldwide Fulfillment Services, an Alpharetta, Ga.-based outsourcing company, both have instituted a no e-mails on Fridays policy. In both instances, productivity and professional working relationships have improved significantly.
(*Editor's note – Huh?*)

◆ **FROM SHRM** ◆

“Mandatory paid leave under consideration”

A plan introduced by Senator Ted Kennedy (D-MA) and Representative Rosa DeLauro (D-CT) would require organizations with 15 or more full-time employees to provide at least seven days of paid sick leave every year.

As currently drafted, the legislation (known as the "Healthy Families Act") also would lock-in existing leave benefits, such as “paid time off” (PTO) programs, thereby limiting or eliminating an employer's flexibility in making even minor adjustments in leave provisions. There is no time frame as to when Congress will consider this proposal.

◆ **A REAL LIFE SITUATION** ◆

Situation: Just recently, two separate incidents involving two entirely different organizations had an identical situation: an individual in a management position that yelled, cussed, and belittled his subordinates and anyone else within earshot.

In one case, the individual acted in this inappropriate manner in front of everyone except the big boss. The big boss did not hear or know of any of this manager's outbursts, so the conduct continued until the high turnover was so obvious that it highlighted what the manager had been doing. At that point, the big boss wanted to send the manager to some sort of ‘therapy’.

In the other case, the company knew about the manager's inappropriate behavior and wanted to send him to ‘anger management’ classes so that he would be able to better manage his staff without outbursts.

Observation: Although therapy and anger management classes are a good idea, the real issue is that a very volatile

individual is managing a group of employees. These employees are scared, some are leaving (and it's usually the good ones), they have no respect for their manager, and they have lost all faith in the organization to do something about it.

As a result, although compassion may play a part in offering therapy or anger management, the most effective approach is to tell the person to stop it. There's no training involved. There's no need to give the individual 45 days or 3 months to get better and improve. It's a behavior that needs to stop. And it needs to stop now. And if any member of the management team cannot do that, then the recommendation is termination.

Society as a whole has lowered its standards too much and individuals, especially those in management, need to be held accountable for their actions.

FEATURED SERVICE
Training on Workplace Bullying

There are currently 12 states considering a bullying bill. There is even a “Workplace Bullying Institute” that has their own web site called Bullybusters.org that encourages healthy workplace legislation for their own state legislatures.

Bullying takes the form of intimidation, giving someone the silent treatment, having mood swings, gossiping all the time, being angry, having tantrums, humiliating others, frequently giving undesirable work assignments, and so on.

Supervisors/managers need to not only ensure that bullying is not taking place at work, but also to ensure that they are not guilty of being bullies themselves.

HR&M can provide the right approach and the right direction in addressing a situation that is unfortunately escalating to a point that the government thinks it may have to step in and have a law to cover this type of behavior.

Contact HR&M for additional information.

◆ **REMEMBER! WE CAN HELP!!** ◆

Consulting on performance, attendance, FMLA, Wage & Hour, management accountability, and other unique issues is just one of the areas of our expertise.

We also provide:

- supervisory/management training, ranging from brown bag luncheon training to ½ or full day sessions
- employee handbook development, from creating to updating
- responses to discrimination charges and unemployment claims
- on-line performance review forms and processes
- guidance on coaching, counseling, and disciplining in employee relations matters