

RECENT DECISIONS OF INTEREST TO EMPLOYERS

Full Pay Not Required for “Light Duty” Work Under FMLA:

Because the FMLA does not require any particular wage rate for an employee on medical leave of absence, an employee who returns to “light duty” work after an illness or an on-the-job injury need not be paid at the employee’s former pay rate if the employee is unable to physically perform the functions and duties of her former position.

No Right to Witness for Non-Union Employees:

Non-Union employees do not have the right to a witness during an investigative interview that might lead to discipline. Union employees still have such rights.

Transsexuals Not Protected From Discrimination:

Title VII does not ban discrimination against transsexuals as a class because the plain and traditional meaning of the term “sex” in Title VII does not encompass anything more than male and female. Title VII’s prohibition against sex discrimination extends to transsexuals only if they are discriminated against because they are male or female. NOTE: some state laws protect transsexuals.

Consider FMLA Leave for Employees Exhibiting Unusual Behavior:

Sudden bizarre behavior of a worker who had been a “model employee” may constitute “clear abnormalities in behavior” sufficient to put the employer on notice that the employee has a serious health condition, thus triggering FMLA coverage.

Disability Pay During FMLA Leave:

An employee on FMLA leave who receives disability payments cannot be required to use up sick and vacation benefits during the leave pursuant to employer policy.

Sensitivity to Fragrance Is Not a Disabling Condition:

An employee who complained of sporadic headaches, stuffiness, fatigue, sore throat and shortness of breath because of an allergy to perfumes and other fragrances is not disabled under the Americans with Disabilities Act because she cannot show her condition substantially limited her performance of any major life activity.

Sexual Harassment Claim May Include Events Outside 300-Day Period:

Although the EEOC generally only considers alleged incidents occurring within the 300-day limitations period for filing a charge, courts increasingly are holding that conduct occurring more than 300 days from the filing date can be considered, either as part of the hostile work environment allegedly condoned by the employer or because the employee has remained within a single chain of command.

For further information regarding the topics described above, please contact **Joan M. Eagle** at 312.845.5439 or jeagle@schwartzcooper.com or any other member of Schwartz Cooper’s Labor & Employment practice.