



## **EMPLOYMENT LAW “SOUND BITES”**

By: Joan M. Eagle

This article contains a brief overview of some interesting and instructive cases and developments in the field of employment law.

### **FMLA/RETALIATION**

An employee who was continually harassed by her supervisor after she requested a leave of absence was awarded \$107,572 in liquidated damages, in addition to other damages, for retaliation in violation of the Family and Medical Leave Act. The employee, a drill operator, was moved to different machines, disciplined for taking sick days not covered by the FMLA, and punished for returning late from breaks, while others who had not requested FML were not treated similarly

### **DISABILITY DISCRIMINATION**

An employee who used marijuana for medical purposes to relieve muscle spasms that allegedly limited his ability to sleep was deemed not disabled or entitled to accommodation by a court when he was unable to pass his employer’s drug test.

### **SEX DISCRIMINATION/DISCHARGE**

A female employee who was discharged by the company’s owner after the owner’s wife made him choose between her, his “best employee,” and his marriage was not discriminated against where the employee had engaged in consensual physical conduct with the owner and had written sexually suggestive notes to him. The court found that the basis for the employee’s discharge was not her sex but was the owner’s decision to placate his wife’s concerns.

### **SEXUAL HARASSMENT**

Title VII does not cover harassment by a supervisor who sexually harassed both a female and male employee (a married couple). The court held that under such circumstances the employees could not prove that the harassment had occurred “because of sex,” as required under Title VII to support such claims. One judge noted that a case of “equal opportunity harassment” might be covered by Title VII if the harassment was not so equal and thus discriminated against one sex or the other.

## **RACIAL HARASSMENT/ASSOCIATIONAL DISCRIMINATION**

A white construction worker has been allowed to proceed to trial on his claim of hostile environment racial harassment that allegedly began when his new plant manager discovered he was married to an African-American woman. The manager was allegedly abusive over a two to three week period, using racial and other abusive epithets and sending the employee to shovel rocks after he complained to the manager's superior.

## **FLSA/NO DEDUCTIONS FOR UNIFORMS AND CLEANING**

The Wage and Hour Division of the U.S. Department of Labor released an opinion letter last month holding that restaurants may not deduct uniform and cleaning expenses from the tips and wages of tipped employees, even if the employee signs an agreement authorizing the deductions. The Department of Labor reasoned that employers who require tipped employees to wear a specific, clean uniform for work cannot then require that employees pay for the uniform and cleaning if it would reduce the employees' wages below the Fair Labor Standards Act minimum wage requirements.

For further information regarding these cases or topics, please contact Joan M. Eagle at (312) 845-5439 or [jeagle@schwartzcooper.com](mailto:jeagle@schwartzcooper.com).