FENWICK & WEST LLP

Weekly Employment Brief

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Kirsten Heaton, Contributor, 650.335.7956
Allen Kato, Co-Editor, 415.875.2464
Thomas Moyer, Co-Editor

Court Enforces San Francisco Ordinance Requiring Airlines To Provide Equal Benefits To Domestic Partners

Airlines wanting access to San Francisco's International Airport will have to offer domestic partner benefits for gay and lesbian couples as well as heterosexual couples, the 9th Circuit ruled. In *Air Transport Assoc. v. San Francisco,* the Appeals Court upheld a local San Francisco ordinance, which requires airlines that do business at San Francisco International to offer travel benefits and employee discounts on an equal basis to heterosexual families and registered domestic partners. The decision does not require the airlines to provide free or discounted tickets to anyone, it simply requires that any benefits that are provided be provided on an equal basis. Rejecting the airlines argument that federal law preempts the ordinance, the Appeals Court held that the ordinance has no "forbidden connection" with airlines prices or services, and that San Francisco could use its monopoly control over access to the Airport to compel airlines to comply with the ordinance.

Hundreds of Thousands of Dollars In Unpaid Wages Alleged In Los Angeles Sweatshop Suit

Claiming they worked 10 to 12 hour days, six days a week, for less than minimum wage and no overtime pay, nineteen workers from six downtown Los Angeles garment factories filed suit September 6, 2001, against a popular clothing manufacturer and retailer, "Forever 21." *In Castro v. Fashion 21, Inc.,* (L.A. Super. Ct.), plaintiffs are suing under a relatively new and little known state law which makes manufacturers and private-label retailers the guarantors of the wages of workers in California who sew their goods. The complaint alleges the factory employers failed to pay minimum wage or overtime as required by law, falsified payroll and tax records and routinely denied workers their meal and rest breaks. Citing virtually third world conditions, including poor ventilation, cockroach and rat infestation, no potable water and blocked escape routes, the workers allege a number of physical injuries in addition to the wage and hour law violations. Forever 21 operates 92 stores throughout the United States.

Cafeteria Worker Whose Disability Precludes Dishwashing Entitled To Reasonable Accommodation

In a decision which demonstrates the broad protections of state disability discrimination laws, a cafeteria worker in New York has won a preliminary injunction that requires the school district to reasonably accommodate her dishwashing disability. Sharon Gallman, who has worked in the Allegany, New York school district since 1986, successfully argued in *Gallman v. Friendship Central School District,* that her employer must reasonably accommodate her disability (dermatitis and dyshidrosis). These conditions fall within the definition of a disability under the New York Executive Law, but would not be covered by the federal Americans with Disabilities Act. After fourteen years of preparing food trays, making sandwiches and baking, Ms. Gallman was reassigned to dishwashing duties. Although she presented a note from her dermatologist requesting she be reassigned because her alleged impairment precluded her from carrying out dishwashing duties, her supervisor refused. Ms.

Gallman was then placed on medical leave, and was advised she could not return to work until she could perform the duties of a dishwasher. Ms. Gallman sued, contending the district was illegally discriminating by refusing to accommodate her disability. The Court ordered the school district to reasonably accommodate Ms. Gallman by reassigning her to cafeteria work other than dishwashing.

Critique of Management a Protected "Concerted Activity"

When Diane Baldessari's employers suspended her for challenging a new policy and criticizing management during a group meeting, they committed an unfair labor practice, according to the court in *NLRB v. Caval Tool Div., Chromalloy Gas Turbine Corp.,* 2d Cir. The court held that the computer programmer was engaged in protected concerted activity when she spoke up during a group meeting, and challenged the company's president regarding a new policy regarding rest breaks. Ms. Baldessari challenged the policy on behalf of production workers (who were not present at the meeting). The company president allegedly suggested that human resources should "come up with a package" so Baldessari could leave. Later that day, Ms. Baldessari was suspended and placed on probation. It is important to note that the federal National Labor Relations Act protects employees who engage in concerted activity even in non-union work sites.