



FENWICK & WEST LLP

Weekly Employment Brief

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Thomas Moyer

Contributor

Allen Kato

Editor

415.875.2464

EEOC Chair Urges Workplace Tolerance In Face Of Terrorist Attacks

In the wake of the terrorist attacks in New York and Washington, D.C., the EEOC Chair Dominquez called on all employers and employees to promote tolerance and guard against discrimination based on religion and national origin. “We should not allow our anger at the terrorists responsible for the attacks to be misdirected against innocent individuals because of their religion, ethnicity, or country of origin,” Chair Dominguez said. “In the midst of this tragedy, employers should take time to be alert to instances of harassment or intimidation against Arab-American and Muslim employees. Preventing and prohibiting injustices against our fellow workers is one way to fight back, if only symbolically....” The EEOC encourages all employers to do the following:

- Reiterate policies against harassment based on religion, ethnicity, and national origin;
- Communicate procedures for addressing workplace discrimination and harassment;
- Urge employees to report any such improper conduct; and
- Provide training and counseling, as appropriate.

Employee Nurse Better Off As A Patient

The Eight Circuit Federal Court of Appeal recently held that a nurse with rheumatoid arthritis who worked in an extended care facility was unable to fulfill the essential functions of her job and therefore her employer did not violate the ADA when it fired her. In *Stafne v. Unicare Homes* the Court upheld a jury verdict finding that plaintiff was unable to push

wheelchairs and perform other job functions because she needed to use a motorized car. This case should serve as a reminder to employers that the duty to make reasonable accommodations is an essential component of the duty not to discriminate, but a component with limits nevertheless. Employers would be wise to adhere to the following principles when determining the duty to make reasonable

- There is no obligation to make a reasonable accommodation if the person is not otherwise qualified for a position.
- The duty is ongoing, and may change if an employee’s job duties or disability change.
- The duty to reasonably accommodate applies to all phases of employment, from recruitment through termination.
- An employee need not mention the ADA or use the words “reasonable accommodation” to request accommodations under the act.
- The ADA does not require employers to provide the exact accommodation requested by the employee; just a reasonable accommodation.

Refusal To Give Muslim Driver Long Lunch Not A Failure To Accommodate

A federal court in New York recently held that a Muslim truck driver failed to establish that his employer violated Title VII when it refused to give him an extended lunch hour on Fridays so he could attend prayer services. In *Elmenayer v. ABF Freight Systems*, defendant attempted to reasonably accommodate plaintiff’s religious obligations by allowing him to bid on work schedules that would not interfere with his

Friday prayers. However, plaintiff rejected defendant's offer and demanded the company breach a seniority system to accommodate his request. The court rejected plaintiff's argument finding that employers need make only reasonable accommodations to the religious needs of its employees rather than adjust its operations, practices, or policies to fit the dictates and prohibitions of a particular religion.

US Supreme Court To Address Great Number Of Employment Cases

The U.S. Supreme Court has already agreed to hear 14 employment cases, plus a dispute about affirmative action during its 2001-2002 term. By comparison, at this time last year there were only five employment-related cases on the Court's docket, while two years ago there were none. Highlights for review include: The first case selected for review under the FMLA; Adarand Constructors third challenge to an affirmative action contracting program; eight employment discrimination cases, one case under the National Labor Relations Act, and two cases involving ERISA.

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