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Weekly Employment Brief

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Paying for Chat Room Volunteers

Three California chat room "volunteers" recently sued AOL for minimum wages they claimed they are due. These volunteers received free or discounted service in exchange for controlling the chat rooms (including enforcement of ISP contracts, resolving technical problems, and the posting of original work by users). The Plaintiff's now allege, in *Johnson v. America Online Inc.*, that AOL profited from not having to pay minimum wages to these volunteers in violation of the California Labor and Business & Professions Code. The plaintiffs further contend that since other ISPs do not use "volunteers," these companies are at a competitive disadvantage by AOL's practice.

Taxes, Speak Now or Forever Hold Your Peace

The IRS recently issued new rules that would force companies to withhold payroll taxes for employee purchases under stock purchase and incentive stock-option plans. These new rules include withholdings for Social Security and Medicare, but do not require withholding for federal and state income taxes. If these rules are implemented in 2003 as scheduled, some critics fear that the extra administrative burden will cause employers to cancel many such programs. The withholding for Social Security, Medicare and other payroll taxes will be based on the discount employees receive when purchasing stock in such plans. Companies would also be required to report the discount as regular income on a W-2 statement if the employee sells the stock before qualifying for long-term capital gains. The IRS is currently accepting comments on these regulations until February 14, 2002, with hearings scheduled for March 7.

Suing Beyond the Statute of Limitations

The California Youth Authority (CYA) was sued by an applicant who was denied a position due to his color blindness. Although doctors found him capable of performing the job he sought, the plaintiff in *Douglas v. California Department of Youth Authority* was still denied the position. Although the Rehabilitation Act and the ADA both have time limits in which to file claims, the plaintiff argued that his claim was not barred based on the continuing violations doctrine. In cases where a plaintiff can point to a series of related acts against one individual of which at least one falls within the limitations period, then the plaintiff's claim would not be barred by a statute of limitations under the continuing violations doctrine. A plaintiff may also establish a continuing violation by showing a systematic policy or practice of discrimination that operated, in part, within the limitations period. In *Douglas*, the court found that the CYA had maintained a systemic discrimination policy through its color vision requirement when combined with the repeated efforts by the plaintiff to gain employment.

Employer Required to Provide Employee with "Due Process" Prior to Termination

A laid-off social worker was found to have been deprived of due process by his county hospital employer, despite a finding that bias played no role in the reduction in force. In *Lalvani v. Cook County*, the plaintiff was determined to be a civil servant due to the hospital's prior management by the Health and Hospital Governing Commission. As a civil servant, the employee could only be terminated for cause. The Federal Court of Appeals held that an

employer cannot use the excuse of a reduction in force for denying a civil servant due process prior to separation from employment. Employers who count civil servants among its employees must be mindful of the due process rights of such employees and their status as for cause employees. As a result, under the due process clause of the 14th Amendment, these employees must be given an opportunity to rebut allegations of bad performance prior to his or her termination.

Employer Put on Notice of Harassment by Employee's General Complaints

A federal district court has allowed a factory worker to move forward with her claim of hostile environment sexual harassment after alleging that the employer knew about the offensive activities and did nothing to stop it. For two years the employee complained to her supervisors in general terms about the offensive conditions within the factory without providing specific details. The judge in *Dysert v. Whirlpool Corporation* explained that one element of establishing a hostile work environment includes showing that the employer knew or should have known of the harassment and failed unreasonably to take prompt and appropriate corrective action. The judge determined that a jury could find that the employee's general allegations were enough to put the company on notice that inappropriate behavior was occurring. As a result, managers and supervisors should always take seriously any complaints by employees of inappropriate behavior.