FENWICK & WEST LLP

Weekly Employment Brief

July 2, 2001 Thomas Moyer Contributor
Allen Kato Co-Editor 415.875.2464

Miles Locker Apparently Demoted

Just days after managers at Sun Microsystems backed off from forcing all employees to take a mandatory week of vacation, the top state attorney responsible for a controversial interpretation of California's overtime statute has apparently been demoted. The Sacramento Bee reported that Miles Locker is expected to step down from his job as Chief Counsel of the DLSE on July 15. The demotion stems from an opinion letter that held California employers could not force salaried exempt workers to take vacations of less than one month. Mr. Locker's letter was published just as many companies, like Sun, were preparing to close during the first week in July in order to save on energy and labor costs. Last week state Labor Commissioner, Arthur Lujan, withdrew Locker's letter noting that California law "appears in flux," and that the State would re-evaluate its position.

Even If Thou Shalt Attend, Thou Needn't Listen

Employees who silently read Bibles during sensitivity training on homosexuals in the workplace may be able to sue their employer for disciplining them. In *Altman v. Minnesota Department of Corrections*, the Eighth Circuit ruled that three employees of the Minnesota Department of Corrections who were required to attend a diversity workshop, that they claimed offended their religious beliefs, may proceed to press religious discrimination, equal protection, and free speech claims under both the 1964 Civil Rights Act and the U.S. Constitution. All three suffered written reprimands for their behavior, resulting in lost promotions for two employees and a negative performance evaluation for the third. Although the court limited itself to discussing public employees, the decision may have an impact on private employees' decisions to bring similar suits. Employers should be careful of reprimanding forms of protest on the part of employees opposed to company social policies.

If You Can't Stand The Heat, Get Out Of The Kvetching

An employee disciplined for spending over an hour every morning "sitting around, drinking coffee" and criticizing his co-workers may not bring a defamation suit after his co-workers complained about him. In *Sheehan v. Anderson*, a Pennsylvania federal court threw out bank examiner John Sheehan's lawsuit, explaining that Pennsylvania law recognizes a "conditional privilege" for comments to management focusing on a fellow employee's job performance. Although the California Civil Code does not supply a privilege for workplace statements, this case may influence the likelihood of California courts developing a similar doctrine.

No Recovery For Depression Brought On By The Sexual Harassment Of Fellow Colleagues

A female New York City subway employee lost out on a $60,000 award when an appellate court threw out her hostile work environment verdict. According to the *Leibovitz v. New York City Transit Authority*, emotional trauma brought on by a male supervisor's sexual harassment of female co-workers is not an injury covered by Title VII of the Civil Rights Act. Title VII only covers activity within an employee's "sight and regular orbit," the court observed. Unless an employee can prove that abuse had an impact on his or her own working relationships, the claim will fail. This decision narrows the scope of "hostile work environment" for the purposes of Title VII lawsuits.