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Weekly Employment Brief

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California Supreme Court rejects employer trespass claim against former employee for repeatedly sending e-mails to other employees

In a surprising reversal for employers, the California Supreme Court ruled in *Intel Corporation v. Hamidi* that Intel could not bring a trespass claim against a former employee who repeatedly sent unsolicited e-mails to Intel's employees. Over a period of two years, Hamidi on six occasions sent to the company's employees mass e-mails criticizing Intel's employment practices. Each e-mail was sent to about 35,000 employees. Hamidi did not breach any computer security barriers in the process (he asserted that someone anonymously sent him the list of employee e-mail addresses on a floppy disk). Intel conceded that the e-mails neither caused physical damage to Intel's servers, nor deprived the company of the use of its computers. Rather, Intel alleged a loss of productivity caused by the thousands of its employees reading Hamidi's messages, plus the time and effort expended by the company in attempts to block Hamidi's messages. The court held that absent physical harm to the company's computers or loss of use, Intel could not state a claim against Hamidi for trespass. However, the court also went out of its way to point out that employers were not without other legal remedies, for instance, the company could bring a defamation claim against a former employee for making defamatory comments. The court also contrasted the legitimate right of internet service providers to sue "spammers" to stop unsolicited commercial bulk e-mails. Lastly, the court's decision does not affect an employer's ability to control its own e-mail system by blocking all e-mails from a certain sender or similar measures.

U.S. Supreme Court allows affirmative action to continue

In a long awaited decision, the U.S. Supreme Court held in *Grutter v. Bolinger* that the use of race as a factor in student admissions by the University of Michigan Law School was lawful. Although not an employment case, the *Grutter* decision will likely guarantee the continuation of federal affirmative action laws in employment for the foreseeable future. For instance, Executive Order 11246 requires affirmative action in employment by certain federal contractors and subcontractors. The Michigan Law School's affirmative action program considered race as a "plus" factor in determining a student's application for admission. The school defended the practice as supporting legitimate efforts to diversify the student body. The court held that "diversity" was a compelling state interest that justified the use of race as a plus factor. Employers are cautioned, however, not to consider race (or any other protected characteristic) in making an employment decision absent a lawful reason, such as an affirmative action obligation imposed by federal contract.

Homeowner is not liable for OSHA violations to worker injured while trimming tree

In a case of interest to our readers who are also homeowners, the California Supreme Court decided in *Fernandez v. Lawson* that a homeowner is not an "employer" liable for OSHA violations that result in injury to a worker hired to trim a tree on residential property. In *Fernandez*, homeowner Lawson hired a tree trimming company to trim a 50 foot palm tree on his property. Unknown to Lawson, the company was unlicensed and apparently had no insurance. Fernandez, an employee of the contractor, fell while working on the tree and suffered serious injury. He sued Lawson for damages on the basis that Lawson was his employer and liable for violating OSHA, which requires the employer to furnish a "safe and healthful" workplace. The court concluded that, for the purposes of OSHA only, "employment" does not include household domestic service such as tree trimming and other yard work. While the decision affords relief to homeowners, it is "best practice" to obtain proof of proper license status and existing insurance coverage from any contractor in advance of the work.

Employee's invasion of privacy claim is not barred by the Workers' Compensation Act

In *Operating Engineers Local 3 v. Johnson*, the union representing an employee, Bonita Vinson, brought a lawsuit on Vinson's behalf against Johnson (Vinson's supervisor) and the employer, the County of Alameda. In March 1999, Ms. Johnson announced at a staff meeting, in the presence of numerous employees with no interest in the matter, that she intended to reprimand Vinson. Johnson directed Vinson to write her own letter of reprimand. Subsequently, Johnson distributed to an even larger number of additional employees the minutes of the meeting in which this disciplinary action was reported in bold print. County policy expressly required maintaining the confidentiality of such personnel matters. At trial, a jury awarded Vinson $10,000 for violation of her right to privacy. On appeal, defendants argued that the tort claim for invasion of privacy was barred by the exclusive remedy for workplace injuries afforded Vinson under the Workers' Compensation Act. Rejecting this argument, the California court of appeal held that such an invasion of privacy was not a "normal part of the employment relationship" as to invoke the coverage of the Workers' Compensation Act. Although demotions and reprimands are a "normal part" of employment, according to the court, Johnson went "beyond the norm" by broadcasting the reprimand to those with no need to know. Employers are cautioned to not make a public example of a non-performing employee and to keep disciplinary matters confidential.