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Accommodation of Disabled Does Not Require Displacing Other Workers

Reasonable accommodation for disabled employees does not require displacing or promoting other workers. In *Lucas v. Grainger Inc.*, a recent Eleventh Circuit opinion, the court rejected a disabled employee's claims for requesting such accommodations. While the ADA and California's FEHA may require an employer to restructure a particular job by altering or eliminating some of its marginal functions, employers are not required to displace other employees or transform a position into another one by eliminating functions that are essential to the nature of the job as it exists. Employers are reminded, though, that they must engage in the interactive process with a disabled employee who requests a reasonable accommodation, and cannot simply dismiss the initial request because it is unreasonable.

Teasing Employee for Effeminacy May Constitute Sex Harassment

Teasing an employee because of his effeminacy may constitute sex harassment under Title VII. In a recent Ninth Circuit opinion, the court allowed an employee to proceed on his sexual harassment claim because he was singled out by male co-workers and a supervisor who considered him feminine and believed he did not meet their views of a male stereotype. The employee was subjected to insults, name calling, vulgarities and was repeatedly referred to as "she" and "her." Even though the employee at times engaged in "horseplay" with the alleged harassers, the court held that the "horseplay" did not lessen the potential impact of the comments, and the court allowed the employee to take his claim to trial. Employers need to be mindful of any teasing that involves an employee's masculinity or femininity no matter how innocuous it appears.

Arbitration Agreements are Unenforceable if Employee Must Pay Half

Employers must bear the full cost of arbitration to make their arbitration agreements with their employees enforceable. In F*lyer Printing Co. v. Hill*, a recent U.S. District Court opinion, the court held that a former employee did not have to arbitrate her pregnancy discrimination claims because the arbitration agreement's requirement that she pay half the arbitration costs made the agreement unenforceable. In California, to make their arbitration agreements enforceable with their employees, employers must agree to bear the entire cost of arbitration.

Employers May Owe Wages for the Donning, Doffing of Protective Gear

Can employees really be paid for donning and doffing their clothing? Courts have recently held that workers in the meatpacking industry should be paid for time spent putting on and taking off protective attire and equipment. It is unsettled whether payment for similar practices is required in the silicon-chip industry, such as jobs in environmentally controlled situations requiring sanitary clothing and equipment.