FENWICK & WEST LLP

Weekly Employment Brief

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Continuing Violations Extend Limits Of California Discrimination Law

The California Supreme Court may have opened up discrimination suits to cover years of discriminatory practice. In a recent decision, the Court held that the state's one-year statute of limitations for filing discrimination suits does not apply if the employee can show that the employer engaged in a single course of unlawful conduct over an extended period of time. In *Richards v. CH2M Hill, Inc.*, the employee accused her employer of disability discrimination and harassment for failing to reasonably accommodate her multiple sclerosis from 1988 through 1993. While the employer argued that she could only seek damages for a period of one year, the court found that the employer had committed a "continuing violation" and allowed evidence of five years of alleged discrimination and harassment. The California Supreme Court upheld this decision, ruling that a continuing violation may occur when the employer's unlawful actions can be viewed as a single, actionable course of conduct. The Court further ruled that the statute of limitations begins to run "either when the course of conduct is brought to an end . . . or when the employee is on notice that further efforts to end the conduct will be in vain." It remains to be seen just how much this "continuing violation" theory will extend California's discrimination laws.

College Athletic Trainer's Lawsuit May be a Slam Dunk

A female athletic trainer cannot be barred from the men's basketball team simply because she's a woman. In *Jenkins v. George Washington University*, the District of Columbia Superior Court found that a female head athletic trainer at George Washington University should be allowed to take her employment discrimination claim to trial. After Jacquelin Jenkins received a promotion to head trainer at the university, she was told that she would not be the trainer for the men's basketball team because the men preferred seeking medical treatment from other men. The court found that these statements were direct evidence of gender discrimination. Even though Jenkins' salary was not lowered, the fact that she was removed from training on the school's premier sport may be enough to establish an adverse employment action. This case demonstrates that the loss of discretion, supervisory power, or responsibility may constitute an adverse employment action in some cases, even if the employee's salary remains the same.

Restaurant Worker Sues Because Co-Workers Called Him Effeminate

A man can bring a sexual harassment claim when he is harassed for not living up to a specific sex stereotype. In *Nichols v. Azteca Restaurant Enterprise, Inc.*, a federal court in Washington found that a restaurant employee who allegedly was sexually harassed because he was too effeminate should be able to take his claim to trial under federal discrimination laws. The employee, Antonio Sanchez, was singled out for harassment by male co-workers and a supervisor because they considered him too feminine. The court found that the supervisor and other employees verbally abused Sanchez with language that was "closely linked to his gender." The court also found that the employer's response to Sanchez's allegations was not sufficiently prompt to avoid liability. This

decision emphasizes the federal court's willingness to protect against discrimination based upon traditional notions of gender and masculinity.

Employee Sues Wal-Mart Because She Was Attacked By Her Husband

A Wal-Mart employee alleges that the store should have protected her from her estranged husband. In *Midgette v. Wal-Mart*, Marsha Midgette claims that her employer should have implemented a policy to protect its employees from spousal abuse. On August 30, 1999, Midgette's husband entered the Wal-Mart branch where she worked, purchased bullets, and shot her in the head before turning the gun on himself and committing suicide. Midgette alleges that Wal-Mart knew that she had won a court order that required her husband to stay away from her and that Mr. Midgette had continued to visit the store after the court order was issued. The lawsuit alleges that because Wal-Mart knew or should have known that the husband's visits were a threat to his wife's safety, they negligently failed to provide a safe place for her to work. Although unresolved, this case suggests that employers may owe a heightened duty of care to its employees when they are aware of spousal abuse.

Special Announcement: Fenwick & West Labor And Employment Group Sets Foot In San Francisco

The Fenwick & West LLP, Labor and Employment group is pleased to announce its expansion into the firm's San Francisco office. Starting August 27, 2001, partner Shawna Swanson will be joined in San Francisco by associates Allen Kato and Kirsten Heaton. The groups expansion to San Francisco is designed to bring us closer to our growing number of San Francisco and North Bay clients.