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Weekly Employment Brief

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Plaintiff's Prior Work As A Call Girl Held Inadmissible Evidence

A New York court recently held a sex harassment Plaintiff's prior work as a call girl inadmissible evidence. Defendant in *Chamblee v. McDonald's Restaurant,* sought to admit Plaintiff's alleged prior work as a call girl to dispute her allegations that she was sexually harassed while working as a swing shift manager at McDonald's. While evidence that Plaintiff was a call girl was not allowed, the judge did not bar evidence that Plaintiff had discussed opening up an escort service and had made other sexual comments to co-workers. This unique case stands for the unremarkable proposition that Courts are loath to permit employers to rely on an employee's non-work activities when making work decisions, but will allow similarly prejudicial evidence if it happens at work.

Journalist's Limitations in Typing and Writing Are Not Limiting Under ADA, But May Be Under FEHA

A newspaper reporter who was fired because a repetitive stress disorder made her unable to type or write for extended periods of time is not limited in a major life activity under the ADA, according to the Ninth Circuit in *Thornton v. McClatchy Newspapers Inc.* According to the court, plaintiff - a features reporter for the Fresno Bee - was not limited in the major life activity of performing "manual tasks" despite impairments that significantly limited her ability to type or write. In rejecting plaintiff's ADA claim, the court found that her inability to type and write for extended periods of time was not sufficient to outweigh the large number of manual tasks that she could perform such as grocery shopping, driving and dressing herself. However, the court remanded plaintiff's FEHA claim to the lower court, noting that recent changes in case law and FEHA's definition of disability required the court to take another look to see if she would satisfy FEHA's less stringent definition of disability.

Court Upholds Employer's Rule Prohibiting Abusive And Threatening Language At Work

A federal court recently held that an employer's work rule prohibiting abusive and threatening language did not violate the National Labor Relations Act (NLRA). In Adtranz v. NLRB, defendant refurbished rail cars for the Bay Area Rapid Transit system in California, and issued an employee handbook that contained a rule prohibiting employees from "[u]sing abusive or threatening language to anyone on Company premises." Violation of the rule was defined as "serious misconduct." The National Labor Relations Board ("NLRB") concluded that, "prohibiting the use of abusive or threatening language... has the unrealized potential to chill the exercise of protected activity, as the rule could reasonably be interpreted as barring lawful union organizing propaganda." A federal court disagreed and reversed the controversial decision after stating: "In its simplest terms, it is preposterous that employees are incapable of organizing a union or exercising their other statutory rights under the NLRA without resorting to abusive or threatening language...."

Leaves Of Absence Requirements For Emergency Rescue Personnel

The California Chamber of Commerce recently provided this Question and Answer that may be helpful to our readers:

Q: Are employees entitled to time off for emergency duty and training?

A: You must provide leaves of absence for certain employees required to perform emergency duty. You are not required to compensate the employee during time off used to perform such duties. An employee denied leave under this law is entitled to reinstatement and reimbursement for lost wages and work benefits.

Emergency rescue personnel eligible for time off include officers, employees, or members of a fire department or firefighting agency of the federal government, the State of California, a city and/or county, district, or other public or municipal corporation or political subdivision of California, or of a sheriff's department, police department, or a private fire department, whether that person is a volunteer or partly or fully paid, while he or she is actually engaged in providing emergency services.

Further advise on Military Leave obligations was covered in a previous W.E.B., but may be reached at: http://www.fenwick.com/docstore/Publications/Employment/WEB_09-17-01.pdf.