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Weekly Employment Brief

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U.s. Supreme Court to Review The Scope of the Ada's "Direct Threat" Defense

Under the ADA, an employer can lawfully exclude from the workplace, any employee's whose disability poses a direct threat to the health and safety of others. For years, many employers believed they could also exclude those employees whose disability posed a direct threat to the employee's own health on the job. This practice made sense to many employers because they believed that such employee's posed a risk to the employee and posed a risk to the employer based on workplace injuries or illnesses. In *Chevron U.S.A., Inc. v. Echazabal,* a panel of the Ninth Circuit ruled 2-1 that employers may not use the "direct threat" defense to exclude employee's who only pose a direct threat to themselves. The U.S. Supreme Court has elected to review the Echazabal decision and determine whether the direct threat defense applies not only to others, but the disabled employee as well.

Jury Holds Employer Liable for Invading the Privacy of Employee Accused of Sexual Assault

A Philadelphia jury has awarded $150,000 to a man who said his employer invaded his privacy by subjecting him to an embarrassing interrogation. The employer began its investigation after a female employee complained that a co-worker had sexually assaulted her after the two had returned to his home after visiting several nightclubs. The accused employee and his attorney claimed that any sexual conduct was consensual, none of the conduct was work-related, and the police not the employer were responsible for any investigation unrelated to work. The jury agreed with the accused employee on his claim against the employer for invasion of privacy and his claim against his co-worker for defamation. The jury rejected the complaining employee's counterclaims of assault and intentional infliction of emotional distress.

California Court of Appeals Upholds $350,000 Verdict for Employee Photographed in Employee Restroom.

The California appeals court upheld a $350,000 verdict for an auto body repair shop production manager who sued his employer after his co-workers broke into the office rest room and took a photograph of him while he was urinating. The co-workers then showed the photograph to other employees who subjected the plaintiff to various humiliating comments. The jury had originally ordered the plaintiff one million dollars in compensatory damages but the trial court reduced that amount to $350,000. The appeals court upheld the award of $350,000, but struck down the trial court's award of an additional $150,000 in punitive damages.

California Employers Faced with New Challenges to Maintain aSafe Workplace

Both State and Federal laws require California employers to maintain a safe work environment for employees. In the wake of new workplace violence fears (real and imagined), many employers are quickly developing policies and practices formerly used by only by relatively few employers. These policies range from how to respond to workplace violence threats and hoaxes to addressing employees who are concerned about coming to work generally. For many employers, one of the focal points these new

policies and practices is a simple, concise workplace emergency program that is well communicated to employees.