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Weekly Employment Brief

November 12, 2001

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Reversal of Fortune

The EEOC was required to pay a defendant's attorney fees in excess of $150,000 in a U.S. District Court in New York. While courts rarely award fees to prevailing defendants in private civil rights cases, the court noted that the EEOC was different because of its resources and expertise. As a result, the court found that the EEOC should ensure that the claims they support are bona fide. In *EEOC v. J.B. Hunt Transportation, Inc.,* the EEOC alleged that the trucking company's use of a drug review list to screen truck driver applicants discriminated against individuals in violation of the ADA. However, the EEOC never alleged or proved the disabilities upon which the claimants were supposed to have been discriminated. Employers can take heart that more courts may be willing to award attorney fees when forced to defend against unfounded actions by the EEOC.

Employer Allowed to Search Computer Without Employee's Knowledge

An employee's Fourth Amendment rights were found not to be violated by a U.S. Court of Appeals in *Leventhal v. Knapek* when the employee's government employer searched the contents of his office computer. After being tipped off by an anonymous letter indicating specific acts of the employee not doing his work, his employer, the New York State's Department of Transportation, ran several searches on the employee's computer without his knowledge. Notably, the agency had a written policy against using state equipment for personal use, categorizing it as theft. The search revealed the employee had violated this policy by using his computer for his private tax business. The court found that public employers have more latitude when conducting workplace searches related to investigations of work-related misconduct. The employer, in such cases, may search a worker's area even when the employee has a reasonable expectation of privacy to that area if the methods used are reasonably related to the objectives of the search and are not excessively intrusive.

Ignorance Is Not Bliss

A Federal Court of Appeals recently held that a company's failure to train managers with hiring authority on the basic features of discrimination laws was an extraordinary mistake. In *Mathis v. Phillips Chevrolet, Inc,* a 59-year-old applicant never got an interview with the company and still won $50,000 in compensatory damages and another $50,000 in liquidated damages. The general manager made it a practice to note the age of applicants on the application and another manager testified that he wanted "bright, young, and aggressive applicants." The hiring manager testified that he did not know it was illegal to discriminate on the basis of age. The judge held that such ignorance on the part of hiring managers could allow a jury to find a company recklessly indifferent to the ADEA, which justifies a liquidated damages award. Employers wishing to escape damages for reckless indifference should ensure that those with hiring authority have a basic knowledge of the discrimination laws.

Bathroom Shy

When a transgendered teacher in a Minnesota school used the women's faculty restroom, a co-

worker complained that such use violated her sincere religious belief against sharing the women's restroom with a formerly male teacher. The court in *Cruzan v. Minneapolis Public School System* held that the complaining teacher failed to show how the use of the facilities by a transgendered employee discriminated against her on the basis of religion and failed to show how it created a hostile work environment. Although the complaining teacher may have been inconvenienced by the bathroom usage, she still needed to show an adverse employment action against her by the transgendered employee's use of the facilities as well as the employer's knowledge of a *bona fide* religious belief against such use. This unusual case serves as an illustration that an employee's complaint on the grounds of religious discrimination is not enough on its own. The complaining party still needs to first make the employer aware of the particular religious views and then suffer an adverse employment action (e.g. refusal to hire, failure to promote, or termination) because of those views.

Wal-Mart's Contraceptive Compliance

A Wal-Mart employee recently sued the retail powerhouse for violating federal regulations issued by the EEOC last year that determined the exclusion of prescriptive contraceptives from comprehensive employee health plans violates Title VII of the Civil Rights Act of 1964. The plaintiff in *Mauldin v. Wal-Mart* will be seeking to turn her suit into a class action. However, a federal judge in the Seattle case of *Erickson v. Bartell Drug Company* earlier determined that Bartell had violated federal law by excluding the cost of prescription contraceptives from prescription drug programs.