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LEGALities

FROM MIKE FARHI

A NEWSLETTER FOR CLIENTS, LAWYERS, EMPLOYEES AND EMPLOYERS

WINTER 2008

The Year in Review

Employment News from 2007

In 2007, there were many decisions made in Employment Law made that could help – or hurt – both workers and employers in the coming year. Here are some highlights:

Dressing for Success Not Discrimination. A judge in Philadelphia threw out a federal discrimination lawsuit claiming that a hostile work environment was created by handing out a book giving advice on how to dress to succeed in a professional office.

Family Medical Leave May Apply to Soldiers' Families and Caregivers. Congress just passed a law expanding the federal Family & Medical Leave Act to protect the jobs of workers who care for wounded soldiers and who are family members of those called to active duty.

No Right to Privacy. A survey of security professionals found that employers are increasingly seeking personal information on their employees, which may expose them to lawsuits under federal and state privacy laws.

Employers May Pay for Protection. The Occupational Safety & Health Administration (OSHA) has issued a rule requiring employers to pay for their workers' necessary protective equipment, Like face shields and harnesses. It will likely be challenged in Court.

NY to Allow Breastfeeding at Work. The New York State Legislature passed a law requiring employers to allow women to take breaks to pump breast milk. But questions remain about how the law will actually apply in the workplace.

“Me-Too” Evidence May Not Help. It's a good bet that the U.S. Supreme Court will rule that evidence in an age discrimination case that co-workers also suffered discrimination are of very limited – if any - benefit to an employee in a lawsuit.

Employers Should Not Avoid “Don't Ask, Don't Tell” on Trade Secrets. Most employers hire new workers without checking on whether they have taken confidential information from a former employer, or have signed a restrictive or confidentiality agreement. Taking information, including trade secrets, has never been easier, according to experts in the field.

No Protection for Christian Guidance Counselor. A school guidance counselor who was fired for preaching abstinence had her case dismissed and lost her appeal. Courts at both levels found that the school board acted in accordance with the U.S. Constitution.

Questions or Comments? E-mail Mike Farhi at mfarhi@nklaw.com.

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The Top 10

What Not to Do at Work in 2008

10. Being too open with Supervisors and Co-Workers. Most employees are “at will,” meaning that their jobs can be ended at any time, for any reason or no reason. That means that political views, dirty jokes, swearing and the like should be kept to yourself. A superior or co-worker who is offended by such comments can influence decisions about promotions, raises – and continued employment.

9. Inappropriate Dress or Personal Grooming. Blending in with the company’s “business style” also avoids causing offense. When in doubt, ask if a style of clothing is appropriate or see what other successful co-employees do. Even if you’re told you can be casual, dress to impress. And watch your table manners and keep odor-free. Your future prospects as a “serious” employee will depend on it.

8. Avoiding the Chain of Command. Report problems to your direct supervisor. Don’t “jump over” him or her to go to someone at a higher level, unless repeated efforts to have your issue addressed are ignored or brushed-off. In that case, go to Human Resources as the next step. One important exception to this rule is if your direct supervisor is sexually harassing or otherwise discriminating against you. In that case, check the company’s policy to see what to do. If there is none, go to the next highest person in the chain of command.

7. Not watching what you eat, swallow and smoke. It’s obvious that you shouldn’t come to work drunk or stoned. But what about being over-caffeinated or suffering the side-effects of prescription drugs? Whatever might affect your behavior and your ability to do your job should be looked at and modified. If you can survive on 3 cups of coffee instead of 6, think about cutting back.

6. Stealing Small. Another no-brainer, right? While most employees wouldn’t think of writing checks to themselves or taking from petty-cash, many have no problem bringing home pens, post-its, stamps and the like. No matter how small, don’t do it. If you’re caught by a co-worker or your boss, you’re fired. And you won’t get unemployment benefits.

5. Abusing Sick Time. If you’re too sick to go to work, follow office procedure. But don’t just rely on the general mail box. Make sure your supervisor hears directly from you, either by voice mail, e-mail or a message left with a secretary or

reliable co-worker. And if it’s more than just a cold, think about getting a doctor’s note – just in case you’re asked for it.

4. Showing up on YouTube, My Space, or Facebook in a manner you wouldn’t want your boss to see or read. More and more employers are checking out their workers by going to social networking and other popular websites. And they’re “Googling” to see what they’ve done and where they’ve been. With 21st century technology, your private life is now public. The naked pictures, nasty messages and politically extremist blogs should be taken down right away.

3. Using or Abusing Your Employer’s Office Technology. Your work computer is for work, not sending e-mails and instant messages to friend or shopping on-line. And the office computer is for copying important documents, not invitations to your party or your resume when you’re looking for a new job.

2. Bringing Personal Problems to Work. If personal problems, whether spousal abuse, caring for elderly or sick parents, or dealing with your kids, are distracting you from your job, it will be noticed. Let your boss or Human Resources know before you give them cause to fire you. The “flip side” of that is not sharing problems with co-workers; however close they may be, involving “friends at work” in your personal life will distract them and make you the subject of unwanted gossip.

1. No Sexism, No Racism, No Homophobia, No Making Fun of Disabilities. For every office romance, there are many more disasters. The riskiest are between supervisor and subordinate, particularly when the supervisor controls raises, promotions and continued employment. Of course, unwelcome advances, whether heterosexual or homosexual, means sexual harassment. If you don’t like a particular race, ethnicity or social group, keep it to yourself and don’t let it influence how you evaluate people at work. With advances in medicine, more and more physically and mentally challenged people are in the workplace; just because their disabilities make you uncomfortable, you can’t mock them, refuse to work with them or make their jobs any more difficult. If you do, your job could be in jeopardy.

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Googling for Information Do It Yourself



Anyone with access to the internet at home or the local library can get a wealth of information to help with legal problems, without calling a lawyer. Here are just a few websites that are “worth a click”.

SOCIAL SECURITY ONLINE. Covers all Social Security-related benefits, including Disability Insurance, Medicare/Medicaid Benefits and Benefits for Children. It also provides a Benefits Eligibility Screening Tool to help determine eligibility for benefits and answers Frequently Asked Questions.

NEW JERSEY DEPARTMENT OF LABOR. Check out information on filing a claim for Unemployment Benefits and Calculating those Benefits, claiming Temporary Disability Benefits and filing a Wage & Hour Claim if you aren’t being paid the minimum wage, or for overtime pay. The **NEW YORK STATE DEPARTMENT OF LABOR** has similar information for claims in that state

EEOC. The U.S. Equal Employment Opportunity Commission (EEOC) site gives helpful information about different types of discrimination, including age, race, religion, sex, disability, national origin and, pregnancy. It also tells how to file a charge of discrimination, has articles on new issues like discrimination against workers with caregiving responsibilities and assists small businesses

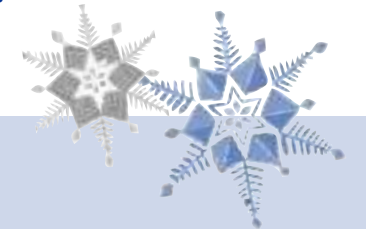
which don’t have Human Resources Departments with knowledge about discrimination law.

NEW JERSEY DIVISION OF CONSUMER AFFAIRS. This website can help you block unwanted telemarketers and learn about your rights under the Consumer Fraud Act, the Lemon Law and the Identity Theft Protection Act.

NEW JERSEY COURTS ONLINE. If you want to sue for money up to \$15,000, this website, learn how to collect a money judgment, change your name, or expunge your criminal record, this site gives information and forms. Look for Forms and Kits for Self-Represented Litigants, where you can also learn about Landlord and Tenant issues and paying a traffic ticket online. The **NEW YORK STATE UNIFIED COURT SYSTEM** site gives information for that state and includes information on attorney referrals.

THE NASHEL KATES WEBSITE. For more detailed information on other areas of law like Business Litigation, Tax Appeals, Wills & Estates, Real Estate Sales & Purchases and Business Transactions, visit *our* website.

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Mike Farhi Recommends...

The practice of law has become more and more specialized. A lawyer who is a “master of all trades” is now a thing of the past, much like 8-track tapes and black & white TV. For that reason, Mike Farhi has been working with a group of specialists in areas of law that he does not handle. Those areas include **Automobile Accident Claims, Bankruptcy,**

Complex Divorce Cases, Criminal Defense, Federal Workers Compensation, Immigration, New Jersey Workers Compensation Claims and Social Security Claims. If you, a family member, friend, neighbor or co-worker needs a lawyer in one of those areas, call or e-mail Mike for a referral.