



Year-End Lowlights

Insights

12.01.09

(Labor Letter, December 2009)

Instead of listing some of the highlights of 2009 (we'll be doing that in our January, 2010 issue), we thought we'd list here for your amusement some of the more far out facts in a few cases we handled this year. These aren't necessarily the cases that made new law or placed our clients the most at risk. These are the ones that really had us scratching our heads about why some people bring lawsuits in the first place.

"What Are We, Psychic?"

An employee claimed he was fired for complaining to the EEOC about sexual harassment. In a lawsuit brought by the EEOC, the company decision maker testified that he was completely unaware of the charge when the termination decision was made for business reasons. The EEOC admitted that it notified the company of the charge **after** the discharge decision was made.

So it all came down to the ex-employee. Did he notify the company that he was filing a charge, or not? And if so, when? He testified not only that he did not notify the company about the charge, but that his attorney specifically advised him not to. Nevertheless he was "sure" that the company knew about the charge. Why? "Well, things just seemed to change."

The EEOC voluntarily dismissed the case.

"Pick Me Up At Eight, And Don't Be Late"

One of our attorneys scheduled a psychiatric examination of a plaintiff who did not drive. The cheapest option was to hire a limousine to take her from her home to the doctor's office, about 40 miles away, and then to hire another driver to take her back home after the exam, eight hours later. It didn't make sense to have one driver wait around the whole day.

The plaintiff staged a sit-in in the limo and refused to come out when she found out the same limo driver was not coming back to pick her up. After multiple calls to her attorney, she was finally convinced that we weren't going to abandon her at the doctor's office without a ride home.

"And Just When Did You Become Disabled?" Part One

A hostler in a rail yard whose job it was to move shipping containers around the yard fell asleep while driving and crashed his vehicle into a row of parked vehicles. He was fired for the accident. He

filed a claim with the state EEO agency, claiming disability discrimination. The disability? The injuries he received as a result of the accident!

The Twinkie Swiss Cake Roll Defense

An employee of a retail chain was terminated for stealing a Swiss cake roll. She argued that she was diabetic, a disability that the company should have accommodated because she needed the sugar in the cake. FYI, allowing theft is not considered a reasonable accommodation. [Note: this case also had allegations of the employee's need to urinate in a bucket behind the layaway counter – we've left those details out in the interest of good taste].

Breaking Up Is Hard To Do

When a slot technician at a Las Vegas casino broke up with his girlfriend, also an employee of the casino, she threatened to get back at him by posting photographs of his private parts throughout the workplace. Although there was never any evidence that she followed through with her threat, the slot tech, convinced that everyone he worked with had seen a picture of his privates, and that they were all involved in a cover-up conspiracy, filed claims including sexual harassment, intentional infliction of emotional distress, and negligent supervision.

After a number of his co-workers and supervisors testified under oath that they had no idea what his private parts looked like, having never seen any pictures, the employee voluntarily dismissed his case. Another example of why it is a bad idea to date a co-worker.

"And Just When Did You Become Disabled?" Part Two

A garbage truck driver was on his route collecting trash when the compactor blade stuck. The truck has all sorts of safety-interlock devices to turn everything off when someone needs access to the moving parts. For example, opening the access door on the side of the truck will cut the power to the blade.

But instead of turning the engine off and taking advantage of the safety-interlock devices, this employee left the motor running and hopped over the top into the truck – bypassing all of the safety devices. When he pulled the stuck piece of cardboard out of the compactor, the hydraulic compactor blade engaged and – surprise! – nearly crushed him.

Thankfully, the employee was not killed, although he was seriously hurt. The company investigated the accident, determined it was a gross safety violation on the employee's part, and fired him. He filed a disability discrimination charge, which was dismissed. No word about his Darwin Award nomination.

Jumpin' Jack Flash Drive

A former employee of our client misappropriated trade secret information by transferring the secrets from corporate computers to his personal flash drive. After representing to the judge that his client did not take any information, the employee's first attorney was compelled to cease representation and send a self-correcting letter to the judge when he found out the truth.

Attorney number two admitted that his client did indeed take the information. "Produce it," was our obvious next request. But the information was not forthcoming. The new attorney related that his client had placed the flash drive in a vise grip in his garage and cranked the vise until it pulverized the flash drive into tiny shards. Our technician expert deadpanned, "Geez, I don't think I'm going to be able to recover anything from that flash drive."

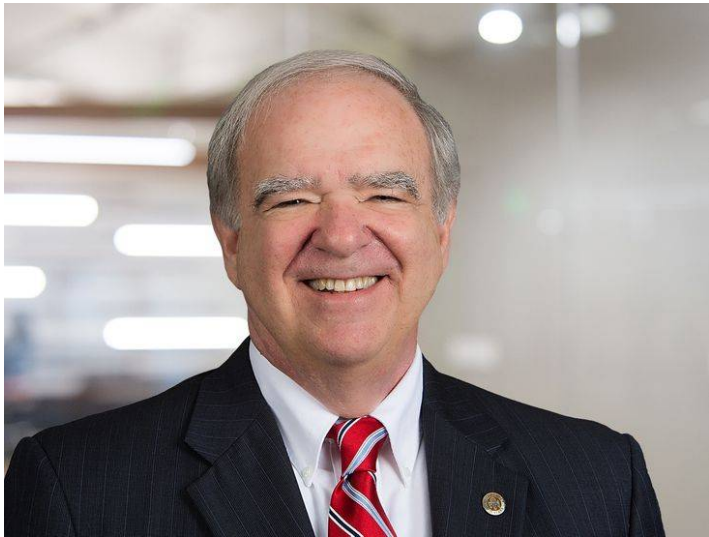
And this last one. Not handled by our law firm, but it deserves a special place on the list.

The Model Employer

The employer was faced with cutbacks that led to a 25% reduction in its workforce. Of course, like most employers, it still needed to keep up production. Unfortunately, it did so by requiring employees to "volunteer" their services and failing to pay overtime. The union representing the employees filed a grievance, and at the arbitration hearing, the testimony established that the employer effectively forced employees to volunteer their work by statements such as "just look at what's on your desk," and "being a success in this job is about the numbers."

Nothing really puzzling about this one you say? Right, except for one thing; the name of the employer. It was the Equal Employment Opportunity Commission.

Related People



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