



Year-End Look Back – The Lowlights

Insights

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(Labor Letter, December 2011)

Every year at this time it's traditional to look back and review the year's highlights. Our list is a bit of a twist, however. If there is anything that sets labor and employment law apart from other areas practiced by our legal brethren, it seems to be the high percentage of odd fact situations that crop up. Here are a few that we'll reminisce about for a long time.

Some of these cases are "golden oldies" that occurred quite awhile back. Others are as recent as a few weeks ago. Here they are in no particular order:

"Could You Repeat That For Me?"

The plaintiff was a black male, terminated for using the "N" word. Curiously, his lawsuit alleged that when he complained that a white supervisor had used the "N" word, the company fired the supervisor. At his deposition he testified how offensive the word was to him personally – and that he would never use it – but that the supervisor was his friend and he never meant to get her in trouble. He was sure that she had only used it because "she must have forgotten I was black."

When his deposition concluded and the parties were off the record, the plaintiff became very gregarious and began telling stories about his youth and how the first company he worked for had been so nice because they hired so many . . . yes, the "N" word flew out of his mouth roughly a dozen times.

The company's HR director, an African-American herself, was taking notes faster than the court reporter had.

"Wake Me When It's Over"

At a car dealership a salesman was found sleeping in the customer lounge. The sales manager woke him up and asked if he was okay, to which he replied he was fine, just tired, and "leave me alone." The sales manager informed the general manager, who then woke him up again and asked if he needed to go to the hospital, and if he was sick. The salesman again said that he was fine and just tired. The general manager fired him on the spot, and asked if he needed a ride home, which the salesman refused.

Two days after being fired, the employee went to the hospital and was diagnosed with migraines and syncope (fainting). He sued under the Americans with Disabilities Act (ADA) claiming the employer fired him for being disabled after he was hospitalized.

After reading our motion to dismiss, opposing counsel voluntarily dismissed the lawsuit with prejudice.

"Scoot Over"

Over the years, McDonald's has received bad press from some activists who claim that their menu is calorie laden and therefore causes obesity. The owners of the White Castle fast food chain were surprised to receive a different kind of lawsuit filed by a customer. He apparently has no beef with how fattening the food is. His lawsuit alleged that he was being discriminated against under the ADA. At 290 pounds, the White Castle booths just weren't big enough.

"Hold The Onions"

In another ADA case, the plaintiff testified during the morning half of her deposition that she had irritable bowel syndrome and that there were a few foods that she had discovered triggered the condition. Of those three or four foods, two were mayonnaise and cheese.

As a courtesy, the defense lawyers offered to order and pay for lunch for the opposing side. After reviewing the lunch menu, plaintiff wrote down her order of a turkey sandwich with roasted peppers, *sharp provolone*, and *mayonnaise*. As a result, plaintiff's handwritten lunch order ended up as an exhibit to her deposition and an exhibit to a motion for summary judgment.

"He Attacked Me, Dude"

A few years ago an employee of Great Bear Adventures in Montana smoked marijuana before arriving at work. When he entered the bear's pen he was attacked and had to be hospitalized. The owner of the tourist attraction argued that the employee was a volunteer and that his use of marijuana caused the accident.

But the state Workers' Compensation Court disagreed and the judge ruled the employee eligible for benefits.

"We Support *All* Our Members"

A story from our friends at *Labor Relations Ink* is so good we'll quote the original blog post verbatim:

"The Teamsters in Oakland, California, filed a grievance against Mills College, complaining that the school had violated its collective bargaining agreement by hiring non-union workers to clear brush. The Teamsters demanded that the college either 1) award backpay to the union members who lost out on the work or 2) require the 500 non-union workers to join the union."

"The only problem? The 500 non-union workers were – and we're not making this up – goats. 'If the college opts to have the goats become members,' said a Teamsters spokesperson, 'we intend to represent them in the same aggressive manner as we do every member.'"

"Paging Mayor Nagin"

A nurse for a New Orleans hospital was fired for poor performance. Her lawsuit alleged lots of claims including disability discrimination, interference with Family and Medical Leave Act rights, sexual harassment (from a male, openly gay, co-worker), and retaliation. In her deposition she noted that she had applied for a job with the City of New Orleans as its public health director. She didn't get the job, but in a reference to Hurricane Katrina stated, "you would have been a lot better off here if I had [gotten the job] because I would have advised our Mayor a little differently than the advice he received."

It's hard to imagine the aftermath of Katrina being any worse than it was, but we can all be glad she was nowhere near the decision-makers after the storm.

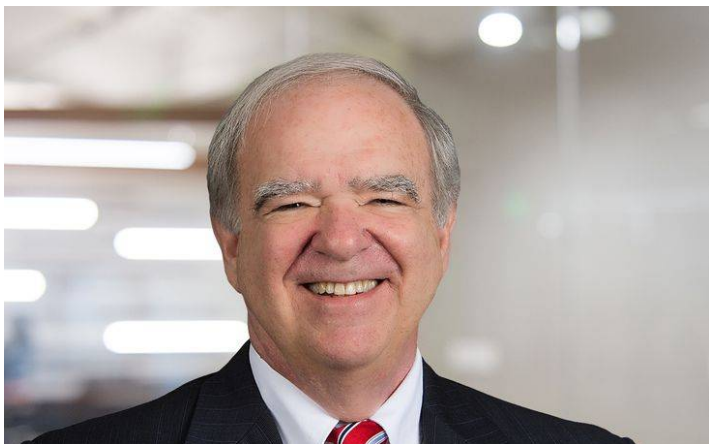
"God Bless Us, Everyone"

An Orange County, California, inmate requested special meals free from salami, which he disliked. He had originally requested kosher meals, but according to sheriff's officials, those are reserved for inmates with a specific religious requirement. When he sued the jail, the judge demanded a religious reason for the convicted drug dealer to get special treatment.

His quick-thinking response: a devotion to "Festivus," an imaginary holiday invented for the television show "Seinfeld" in which participants stand around an aluminum pole and air their grievances against other family members. The inmate received salami-free meals for two months until the county got the order thrown out.

To submit your own off beat or unusual item contact the author at mmitchell@fisherphillips.com or (504) 522-3303. We'll be happy to memorialize it here next year.

Related People





Michael S. Mitchell

Senior Counsel

504.529.3830

Email