Date Issued: 10/08/2001

Welcome to e-News: From the Labor, Employment and Benefits Group of Robinson & Cole

e-News is a bi-weekly electronic newsletter reporting on recent court decisions, new statutes and other timely and topical information. Where appropriate, e-News provides web links to databases where recipients can easily access the actual decisions, statutes or other information. Navigating e-News is just like navigating the web. To access a web link, simply position your cursor on the link and click your mouse. To return to e-News, hit the back button on your browser. To view back issues, click on the "e-News Archives" link on the masthead.

We hope you enjoy e-News. If you know of others who would enjoy receiving this online newsletter (or if you would like to discontinue receiving e-News), pleaseclick here and send us an e-mail message. If you would like certain information covered in future issues, please let us know. We welcome your feedback.

EEOC Reminds Employers Not to Direct Anger at Innocent Employees

The U.S. Equal Employment Opportunity Commission has issued a Press Release (10/1/2001) noting that anger at those responsible for the tragic events of September 11 should not be misdirected against innocent individuals because of their religion, ethnicity, or country of origin. The EEOC also noted that employers and labor unions have a special role in guarding against unlawful workplace discrimination. The Press Release describes some of the possible grounds for discrimination including physical and cultural traits, clothing, affiliation, association, perception and religious accommodation.

U.S. Supreme Court To Hear Case Involving Alleged Termination of Illegal Alien for Union Support

On September 25, 2001, the U.S. Supreme Court agreed to review Hoffman Plastic

Compound Inc. v. NLRB (1/16/2001), where the U.S. Court of Appeals for the District of Columbia ruled that the National Labor Relations Board properly awarded back pay to an undocumented immigrant who suffered discrimination on account of pro-union views. The issue in the case is whether back pay awards for undocumented employees under the National Labor Relations Act violate the Immigration Reform and Control Act or prior U.S. Supreme Court cases.

In addition to the Hoffman case, the U.S. Supreme Court has agreed to hear a 13 other employment-related cases in its current term. A year ago, the Supreme Court only had 5 employment-related cases on its docket.

Illegal to Ask Job Applicant about Medical History But No Damages Awarded

In Griffin v. Steeltek Inc. (8/22/2001), the U.S. Court of Appeals for the Tenth Circuit considered whether to award money damages when an employer asked a job applicant about his or her medical history in violation of the Americans with Disabilities Act but the job applicant did not suffer any harm. A jury found that Steeltek violated the ADA by including on its application form questions such as "Do you have any physical defects which preclude you from performing certain jobs?" But the jury also found that Randy Griffin, who is not disabled and who apparently was not denied a job, suffered no harm. Without any harm, Griffin was not awarded any damages. He was also not awarded nominal or punitive damages or an award of attorney's fees. The appeals court refused to award damages based solely on Steeltek's "technical violation" of the ADA or based on Griffin's "success" at trial in forcing the company to revise its job application.

Roto-Rooter Agrees to Pay $2 Million to Settle Overtime Dispute with 200 Employees

Roto-Rooter Services Company recently agreed to pay close to $2 million to settle overtime claims brought on behalf of approximately 200 of the company's plumbers and service technicians in Chao v. Roto-Rooter Services Company pending in the U.S. District Court in Ohio. The issue in the case was whether the employees were exempt from overtime payments under a Fair Labor Standards Act provision that exempts, in certain circumstances, commissioned salespeople who work in retail establishments. The U.S. Department of Labor had previously issued an opinion letter concluding that the Roto-Rooter did not qualify as a "retail establishment."

Company Pays $300,000 to Settle Claim Alleging "No Creole" Rule

By a consent decree filed in EEOC v. Prudential Insurance Company (8/24/2001) in the U.S. District Court in New York, Prudential agreed to settle with four Haitian employees who were told by a Prudential manager not to speak Creole at work. A different manager enforced the rule on several occasions by asking the employees to "stop speaking in Creole or start speaking in English." While the four employees were prevented from speaking

Creole at work, other employees in the office frequently spoke French, Russian, Italian, Greek, Lebanese, and Spanish without being reprimanded. Prudential agreed to resolve the charges by paying the four employees $300,000 and posting a notice in its Brooklyn/Queens office notifying its employees of the settlement.

Employee Ordered to Return Amounts Advanced Against Commissions

Christopher Burke, a salesman with Ogden Flight Service Group, Inc., signed an employment agreement providing for a base salary and, once a certain threshold was reached, allowing him to request advance payments as a draw against future commissions. Burke voluntarily quit his employment. Prior to quitting, Burke had requested and received approximately $30,000 in advance payments against future commissions, despite the fact that the threshold for the year had not been met. Ogden sued for repayment of the advances, claiming that Burke was not entitled to the advances under his agreement because the threshold had not been met. In Ogden Flight Service Group, Inc. v. Burke (6/26/2001), the Connecticut Superior Court agreed with Ogden and ordered Burke to repay the $30,000, ruling that the contract language made it clear that the parties had agreed that Burke would not become entitled to the advance payments unless and until the threshold level was met. The court rejected Burke's argument that Ogden advanced him the money knowing that the threshold level had not been met, reasoning that the contract language was clear on its face.

General Motors Agrees to Settle Harassment Claims for $1.25 Million

The U.S. Equal Employment Opportunity Commission issued a Press Release (9/26/2001) announcing that automaker General Motors Corporation agreed to pay $1.25 million to 16 employees who work in the company's New Jersey plant. The settlement is part of a consent decree reached with the EEOC involving allegations of discrimination based on sex and race and retaliation. One employee will receive $500,000.

For more information, please contact us

Stephen W. Aronson	Andrew S. Golden	Peter J. Moser
860-275-8281	860-275-8309	617-557-5923

ROBINSON & COLE LLP
Boston - Hartford - New London - Stamford - Greenwich - New York

Visit our Labor, Employment and Benefits Practice website at www.rc.com