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

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U.S. Supreme Court Allows Golfer To Use Golf Cart on PGA Tour

In a much anticipated decision, the U.S. Supreme Court in [PGA Tour, Inc. v. Martin](#) (5/29/2001) ruled that the Americans with Disabilities Act applies to the PGA Tour and that professional golfer Casey Martin should be allowed to ride in a golf cart as an accommodation for his disability. Martin suffers from a degenerative circulatory disorder in his right leg that causes severe pain and effectively precludes him from walking a golf course. Martin requested that the PGA Tour waive its "walking rule" and allow him to use a golf cart, but the PGA denied his request on the ground that walking the course is a fundamental aspect of the sport of golf and that Martin, if allowed to ride, would receive an unfair advantage over other players.

A key issue in the case was whether the PGA Tour is a place of public accommodation covered by the ADA. The court found that the PGA Tour is a place of public accommodation, reasoning that PGA Tour competitions are open to the general public because any golfer with the requisite skill may compete. The court also ruled that the

requested accommodation would not fundamentally alter the sport of golf because the essence of the game is shot-making, not walking. To the extent that walking was intended to inject an element of fatigue into shot-making, the court deferred to the lower court's finding that the fatigue Martin suffers on account of his disability exceeds the fatigue endured by any able-bodied walking competitor.

Massachusetts Highest Court Rejects U.S. Supreme Court's Interpretation of ADA on Corrective Measures

In [Dahill v. Police Department of Boston](#) (5/25/2001), the Massachusetts Supreme Judicial Court ruled that an employee may be deemed "handicapped," and therefore protected under the state's anti-discrimination law, even if the employee's condition can be alleviated by medical devices or other corrective measures. This conflicts with the U.S. Supreme Court's contrary interpretation of the Americans with Disabilities Act in [Sutton v. United Air Lines, Inc.](#) (1999). In [Sutton](#), the airline rejected two job applicants for positions as airline pilots due to their poor eyesight, even though their vision was correctable with appropriate eyeglass lenses. The U.S. Supreme Court dismissed their ADA claims, finding that they were not disabled because their medical condition was correctable.

The Massachusetts court declined to adopt the approach used in [Sutton](#) in interpreting Massachusetts' anti-discrimination statute. The court reasoned that the opposite approach -- determining the existence of an impairment without regard to any mitigating measures -- was consistent with the public policies underlying the state law. Because the court was asked to interpret a state law, it was not bound by the U.S. Supreme Court's decision in [Sutton](#).

Richard Dahill was denied a position as a Boston police officer based on hearing deficiencies that arose during his 26-week training program. Dahill suffers from a severe hearing impairment, but his hearing is largely correctable by using hearing aids. The court ruled that Dahill was handicapped regardless of any corrective measures and that he could proceed with his claim under Massachusetts law.

Flu May be a Serious Health Condition Under FMLA

In [Miller v. AT&T Corporation](#) (5/7/2001), the U.S. Court of Appeals for the Fourth Circuit agreed with a lower court and found that AT&T violated employee Kimberly Miller's rights under the Family and Medical Leave Act when it terminated her employment. Miller's termination was the culmination of a lengthy history of attendance problems and successive warnings from the company. AT&T finally terminated Miller's employment after she was absent from work for several days following a bout with the flu. Although Miller requested FMLA leave in connection with her flu-related absences, AT&T denied her request on the grounds that the flu is not a "serious health condition" under the FMLA. The court, however, disagreed. Despite the fact that the FMLA's regulations specifically state that conditions such as the flu do not ordinarily qualify as a serious health condition, the court

renewed in part on a Department of Labor opinion letter and found that Miller's situation did in fact meet the regulatory criteria as a serious health condition. Miller's flu symptoms included severe dehydration, requiring intravenous fluids; low white blood cell and platelet counts; and numerous doctor and urgent care facility examinations. Miller recovered back pay and attorney's fees.

Heterosexual Succeeds in Claim that Homosexual Manager Created Hostile Environment

In [Cooke v. Stefani Management Services Inc.](#) (5/14/2001), the U.S. Circuit Court of Appeals for the Seventh Circuit upheld a jury's finding that a male heterosexual bartender, Kenneth Cooke, was sexually harassed by the restaurant's homosexual manager, Fred Lagon. Cooke claimed that Lagon engaged in inappropriate touching and made repeated sexual propositions to him that he found offensive. Cooke alleged that Lagon fired him after he forcefully rejected one of Lagon's advances by saying "if you ask me again, there's going to be some serious problems." Although there were no witnesses to corroborate any of Cooke's claims and Cooke engaged in conduct that called his allegations into question such as frequenting the restaurant in his off hours and sending Lagon a friendly and gratuitous thank you note for a gift, the jury found in his favor. The jury awarded Cooke \$7,500 in back pay and \$10,000 in punitive damages, far less than the nearly \$300,000 he had requested. The court noted that the case was "not a slam dunk case for either side" and that the court could have upheld the jury verdict had it gone in favor of Stefani.

U.S. Senate Confirms Rosenfeld as NLRB General Counsel

The National Labor Relations Board issued a [bulletin](#) (5/30/2001) announcing that the Senate has confirmed President Bush's nomination of Arthur Rosenfeld as the NLRB's General Counsel. Prior to his appointment, Mr. Rosenfeld was senior labor counsel of the Senate Committee on Health, Education, Labor and Pensions. Before joining the Committee, he worked in a number of capacities for the U.S. Department of Labor. The General Counsel has final authority over the investigation of charges and the issuance of complaints under the National Labor Relations Act and supervises the NLRB's 32 regional offices.

TWA Settles Sexual Harassment Suit for \$2.6 Million

The U.S. Equal Employment Opportunity Commission issued a [press release](#) (5/24/2001) announcing that Trans World Airlines, Inc. agreed to pay \$2.6 million to settle a lawsuit brought by the EEOC on behalf of female TWA employees. The suit alleged that dozens of female employees were subjected to a sexually hostile work environment and were repeatedly harassed and retaliated against for complaining about discrimination over a 10-year period in violation of Title VII. The allegations included claims that male supervisors engaged in unsolicited touching, sexual propositions, lewd comments, and

exposed their genitals. TWA settled the suit without admitting any wrongdoing.

New Tax Legislation To Effect Significant Changes To Benefits Law

Congress recently passed [major tax legislation](#) that will work significant changes to existing benefits rules. President Bush is expected to sign the legislation in early June. Please note that Robinson & Cole LLP soon will be publishing a special edition of e-News devoted solely to the new tax law.

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