ROBINSON & COLE LLP
LABOR, EMPLOYMENT AND BENEFITS

eNews

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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 any back issues, click on the "e-News Archives" link in 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 Swears In New Chairperson

On August 6, 2001, Cari M. Dominguez was sworn in as the new Chairperson of the U.S. Equal Employment Opportunity Commission. Ms. Dominguez is a Republican appointee, replacing Ida Castro who resigned earlier this month. Ms. Dominguez previously served as a principal in the consulting firm Dominguez & Associates, which she founded. She has also served in government as Director of the Office of Federal Contract Compliance and as assistant secretary for the Employment Standards Administration. Dominguez was confirmed for a five-year term without a Congressional hearing. Two of the other seats on the five-member EEOC are occupied by Democrats, whose terms expire in 2002 and 2004, and the two remaining seats are vacant.

EEOC Reverses Policy, Will No Longer Challenge Retiree Health Care Plans Offering Different Benefits to Younger Employees

The U.S. Equal Employment Opportunity Commission announced in a Press Release (6/20/2001) that it has issued a Directive to drop from its compliance manual a policy stemming from a federal appeals court decision last year in which the Age Discrimination in Employment Act was held to apply to retirees. Essentially, the position expressed in the court decision and prior EEOC policy was that an employer discriminated on the basis of age in violation of the ADEA by offering lesser benefits to retirees who are eligible for Medicare. The court decision had come as a surprise to employers, given that companies frequently offer early retirement packages and "bridge the gap" to Medicare eligibility by providing health coverage only until the retiree reaches age 65. The EEOC's reversal represents an acknowledgment of concerns expressed by both business and labor groups that the prior policy and court decision actually had the practical effect of discouraging employers from offering retiree health care benefits.

Court Defines "Disability" for Purposes of FMLA Provision Allowing Leave to Care for Children Over 18 Years Old

Gladys Navarro requested leave under the Family and Medical Leave Act to care for her adult daughter who was suffering from pregnancy-related high blood pressure. The daughter's condition mandated bed rest, rendering her incapable of self-care. Navarro's request for FMLA leave was denied and she filed a lawsuit.

The FMLA provides that employees are entitled to leave in order to care for a child over 18 years of age if the child has a serious health condition and is incapable of self-care because of a "mental or physical disability." The court considered whether Navarro's daughter suffered from a "disability" that would entitle Navarro to FMLA leave. Although the trial court initially dismissed the case in Navarro v. Pfizer Corporation (8/20/2001), the U.S. Court of Appeals for the First Circuit reinstated the case and sent it back to the court for trial. The appeals court endorsed the FMLA regulations defining "disability" under the Americans with Disabilities Act and found that the pregnancy complications at issue could be deemed an "impairment substantially limiting a major life activity." The court rejected the argument that the temporary nature of the daughter's condition precluded a finding of disability.

Denial of Request To Work at Home Did Not Constitute Disability Discrimination

Brian Kvorjak, who suffers from spina bifida, which can cause partial paralysis, walking difficulties and pain, requested to be allowed to work from home after his office was relocated. Although Kvorjak claimed that his condition prevented him from commuting to the new office – a three-hour daily commute -- his request was denied. Kvorjak sued under the Americans with Disabilities Act alleging that his employer failed to reasonably accommodate his disability.

In Kvorjak v. Maine (8/9/2001), the U.S. Court of Appeals for the First Circuit affirmed the

dismissal of Kvorjak's claim. Crucial to the decision was the fact that Kvorjak's job responsibilities as a claims adjudicator in the state unemployment office required him to serve as an educator, trainer and advisor. The court ruled that Kvorjak could not effectively perform those essential functions of his job at home. Therefore, neither the employer's failure to engage in an interactive dialogue with Kvorjak about accommodation nor the employer's failure to grant the requested accommodation violated the ADA.

Employer's Honest Belief of Job Abandonment May Be Defense to FMLA Claim

Vickie Medley took leave following her father's heart attack, but was terminated because her employer thought she abandoned her job. Medley failed to complete certification paperwork and did not give accurate contact information. She claimed that she was terminated in violation of the Family and Medical Leave Act. At trial, her employer requested a jury instruction that an honest, though mistaken, belief of job abandonment will preclude FMLA liability. The request was denied and the jury awarded Medley over $270,000. The employer appealed.

In Medley v. Polk Company (8/9/2001), the U.S. Court of Appeals for the Tenth Circuit reversed and remanded the case for a new trial. The appeals court ruled that an "honest belief" charge should have been given to the jury because an employer's termination for an honest but mistaken-belief of job abandonment does not constitute illegal discrimination in violation of the FMLA.

Connecticut Court Refuses To Dismiss Claims against Company Based on Supervisor's Infliction of Emotional Distress

In Motzer v. Global Associates (6/19/2001), the Connecticut Superior Court refused to dismiss claims by an employee against her employer for intentional and negligent infliction of emotional distress allegedly caused by her supervisor. The employee, Robin Motzer, was employed by Global Associates as a cook. During 1998 and 1999 she reported to Frank Sacco, the kitchen manager, who subjected her to an unremitting barrage of explicit and highly offensive sexual remarks. Although she complained to Global, the company failed to address her complaints and instructed her to remain working in the kitchen with Sacco. Global moved to dismiss the emotional distress claims on the ground that Global could not be held liable for Sacco's actions. The court relied on the statutory analysis of the U.S. Supreme Court's decision in Burlington Industries, Inc. v. Ellerth and adopted it into Connecticut common law, reasoning that "Ellerth, although nominally a statutory case, stands in the highest tradition of common law decision making, striking a fair balance between the interests of employees and employers in a developing area of the law."

Court Overturns $5.8 Million Verdict for Airline Pilot Allegedly Fired for Refusing To Fly in Ice Storm

In Simmons Airlines d/b/a/ American Eagle v. Lagrotte (8/3/2001), the Texas Court of Appeals reversed a $5.8 million jury verdict in favor of a pilot, Michael Lagrotte, who alleged that he was fired for refusing to fly in an ice storm. Lagrotte essentially argued that he had been fired for refusing to perform an illegal act, an exception to the at-will employment doctrine. Although the airline countered that Lagrotte was terminated for endangering passenger safety through repeated incidents of poor piloting judgment, the jury found in favor of Lagrotte.

On appeal, the airline argued that because Lagrotte was a union employee, not an at-will employee, he could not bring a civil lawsuit for wrongful discharge based on an at-will exception that prohibits terminating an employee for refusing to perform a criminal act. Lagrotte was protected by the "just cause" standard in his collective bargaining agreement, and had access to arbitration to address any grievances. The appeals court agreed, finding that Lagrotte had guaranteed contractual protections and could not maintain a wrongful discharge claim based on the at-will exception.

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

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