



ROBINSON & COLE LLP

## Labor, Employment & Benefits



### **Court Rejects Nurse's Religious Discrimination Claim**

Mary Angelette Morales was employed as a telephone triage nurse for McKesson Health Solutions from November 1998 through December 1999. Her duties included speaking with patients over the phone in order to assess their symptoms and determine the appropriate level of medical treatment required. McKesson had written policies detailing specific questions that nurses should ask the patients. Despite these procedures, Morales, a Roman Catholic, referenced Roman Catholic prayer in calls, referring one patient to a priest to determine if his condition might be a "Eucharistic miracle" and engaging in a dispute with a patient who "took the Lord's name in vain."

Morales' supervisors disciplined her and reminded her of McKesson's requirement that the nurses' conversations with patients stay within the scope of the written policies. When Morales' references to the Roman Catholic faith continued, McKesson issued her a written warning and asked for her assurance that she would refrain from discussing religious beliefs with callers and co-workers. Morales refused and was terminated. She then filed a religious discrimination suit against McKesson, alleging that she was terminated for not accepting McKesson's secularism. In [Morales v. McKesson Health Solutions, LLC](#) (3/22/05), the Tenth Circuit Court of Appeals agreed with the lower court's decision in favor of McKesson. The court concluded that Morales' repeated failure to follow company policy constituted a valid non-discriminatory reason for terminating her employment.

### **No Strict Liability under the FMLA When an Employer Fires an Employee Who Would Have Been Terminated Regardless of Her Exercise of FMLA Rights**

Sandra Throneberry began working as a nurse for McGehee Desha County Hospital in 1988. Her performance was generally good until 1998, when, after her father's death and her divorce, she began to have a nervous breakdown and started taking anti-depressants. Throneberry was frequently absent, failed to read important mail, failed to complete work, cried frequently, and disrupted her co-workers. After several particularly disruptive days, the Hospital Administrator asked Throneberry to take one month of medical leave to "get herself together." While on leave, Throneberry continued to come into work and disrupt her co-workers. On one occasion, the hospital had to call Throneberry's mother to take her home after Throneberry came to work dressed in a short tight dress and sat on top of a desk with her legs spread apart, laughing and giggling. After this incident, the hospital asked Throneberry to resign. Throneberry ultimately agreed to resign with severance pay. After Throneberry left, the hospital found multiple errors in her work in billing Medicaid, which required the hospital to reimburse Medicaid \$40,000.

Throneberry filed a lawsuit against the hospital, claiming that the hospital had interfered with her Family and Medical Leave Act rights and that she would have continued her medical leave had she known that she was entitled to twelve weeks of leave under the FMLA. A jury found in favor of the hospital, concluding that the hospital would have terminated Throneberry even if she had not exercised her FMLA rights. Throneberry appealed, claiming that the FMLA imposes strict liability on an employer who interferes with an employee's FMLA rights. In [Throneberry v. McGehee County Hospital](#) (4/11/05), the Eighth Circuit Court of Appeals denied Throneberry's claim, ruling that an employer may discharge an employee on FMLA leave if the employee would have been discharged regardless of her exercise of FMLA rights. The court agreed that the evidence supported the jury's finding that Throneberry would have been terminated based on her work performance problems and disruptive conduct even if she had not exercised her FMLA rights.

### **Employee fired for sexual harassment failed to prove race discrimination**

Hallie Lamont Randolph, an African-American man, was employed by CIBC World Markets as a supervisor in the mutual funds department. In 2000, CIBC hired Jennifer Leotis to work as a clerk in Randolph's department. Several months after she began working, Leotis complained to CIBC's Human Resources Department that Randolph made comments about her appearance, such as "she was stacked in all the right places" and that she had a "butt like a black woman." Leotis also complained that Randolph frequently rubbed her shoulders, which made her uncomfortable. In its investigation of Leotis' allegations, CBIC interviewed other employees in the office, some of whom reported that Randolph made remarks about the attire and physical appearance of female employees. It was also reported that Randolph asked female employees what they were doing at night and would hold a ruler and threaten to measure the size of the rear ends of the women in the office.

After concluding its investigation, CIBC terminated Randolph for violation of its anti-harassment policy. Randolph then sued CIBC for race discrimination, claiming that he had been treated more harshly than white employees. In [Randolph v. CIBC World Markets](#) (3/30/05), the United States District Court for New York dismissed Randolph's claims, finding that he had not presented any proof that his termination was discriminatory. In reaching its decision, the court relied on evidence that two white employees had been terminated for violation of the CIBC's anti-harassment policy and that Randolph was replaced by an African American employee.

### **Saleswoman Awarded \$29.2M in Damages for Sex Discrimination and Retaliation**

Laura Zubulake began working at UBS Warburg LLC in August 1999 as a director on the U.S. Asian Equity sales desk. She was passed over for a promotion several times and claimed that, as the only female, she was excluded from work-related outings and was subjected to sexist remarks. In 2001, Ms. Zubulake filed a complaint with the Equal Employment Opportunity Commission (EEOC). Less than two months later, she was fired. Subsequently, Zubulake sued UBS claiming sex discrimination and retaliation in violation of Title VII. During the litigation, the parties engaged in significant disputes over the production of evidence, including in particular, email messages. In July 2004, the judge levied sanctions against UBS for destroying email messages and failing to preserve other evidence. At the end of the jury trial, on April 6, 2005, the jury found in favor Ms. Zubulake, and awarded her \$2.2 million in back pay, \$6.8 million in front pay, and over \$20 million in punitive damages, for a total award of \$29.2 million.

### **Massachusetts Commission Against Discrimination Springfield Office Issues Order Regarding Confidentiality of Settlements**

The Commissioner of the MCAD Springfield office recently issued an order declaring that once a probable cause determination has been issued, she will not participate in or sign off on any settlement agreement that contains a confidentiality provision prohibiting the parties from disclosing the terms of the agreement to the general public. A basis for this order is that a probable cause determination indicates that the evidence reveals a significant likelihood that a violation has occurred. This order does not affect settlement agreements reached at the MCAD's Boston office.

### **Increased Enforcement of USERRA Anticipated**

Enforcement of the Uniformed Services Employment and Re-employment Rights Act, which requires employers to grant leave to their employees for military service, was recently transferred to the Department of Justice's division on civil rights. The Department of Justice has indicated that this move will lead to greater enforcement of USERRA, with the Assistant Attorney General of the division promising "speedy and aggressive" enforcement of the law.

As reported in an earlier issue of e-news, employers are required to notify their employees of their rights under USERRA. The Department of Labor poster which sets forth the necessary information is available at [www.dol.gov/vets/programs/userra/poster.pdf](http://www.dol.gov/vets/programs/userra/poster.pdf).

This is an archive of past issues. As a result, it may contain information that is not current.

The logo for Robinson & Cole LLP is displayed on a dark blue, horizontal rectangular background with a slight wave-like top edge. The text "ROBINSON & COLE" is written in a white, serif, all-caps font, with "LLP" in a smaller font size to the right.

ROBINSON & COLE<sup>LLP</sup>