UPDATE

Winter 2003

Including Employment & Labor, Benefits and Immigration Law

EEOC Issues New Guidance on National Origin Discrimination

by John Ray Nelson

In the face of increasing workplace diversity and escalating claims, the U.S. Equal Employment Opportunity Commission (EEOC) has issued new guidance and instructions for investigating and analyzing charges of employment discrimination based on national origin.

Section 13 of EEOC's Compliance Manual emphasizes that, under Title VII of the Civil Rights Act of 1964, "all persons are entitled to the same employment opportunities, regardless of their national origin, ancestry or citizenship status." National origin discrimination - defined generally as "treating someone less favorably because that individual (or his or her ancestors) is from a certain place or belongs to a particular national origin group" - includes discrimination based on ethnicity (*e.g.*, because someone is Arab); on physical, linguistic, or cultural traits (*e.g.*, based upon a person's African style of dress); and on the employer's perception (*i.e.*, based upon the employer's belief that the person is a member of a particular national origin group, even if the person is not).

As with other types of unlawful discrimination, the prohibition against national origin discrimination applies to employment decisions affecting the initiation or termination of the employment relationship (*i.e.*, recruitment, hiring, promotion, transfer, and layoff), as well as those affecting the terms or conditions of the employment relationship (*i.e.*, wages, benefits, work assignments, leave, training, and discipline).

Section 13 identifies "best practices" an employer may follow to comply with Title VII and avoid national origin discrimination:

- In *recruitment*, best practices include techniques designed to cast a "wide net" likely to result in a diverse pool of potential applicants, such as recruitment at job fairs, open houses, professional associations, and search firms. Employment advertisements should notify prospective applicants of all requisite job qualifications, including any qualifications relating to language ability. As always, employment advertisements should expressly state that the employer is an "equal opportunity employer."
- In *hiring, promotion, and assignment decisions*, best practices include the establishment of written objective criteria for evaluating candidates, asking all candidates the same interview questions related to the position in question, and consistent application of the same evaluation criteria to all candidates.
- Best practices for *discipline, demotion, and discharge decisions* involve the development and application of clear, objective criteria related to employee misconduct and unsatisfactory work performance.

Nearly one-third of national origin charges filed with the EEOC raise claims of harassment. Ethnic slurs, workplace graffiti, or other offensive conduct can constitute harassment when so severe or pervasive that the subject employee reasonably finds the work environment to be hostile or abusive. Supervisors, coworkers, and even non-employees (such as customers or business partners) can create a hostile work environment. As with other types of harassment, management's response (or lack thereof) to such conduct can be a key factor in determining whether harassment creates a hostile work environment.

Section 13 also addresses language issues (including "accent discrimination" as well as business-necessity of "fluency requirements" and "English-only rules"), citizenship-related issues (including citizenship requirements and coverage of foreign nationals), and the application of Title VII to foreign employers in the U.S. and to American employers abroad.

The full text of Section 13 can be found on-line at *www.eeoc.gov/docs/national-origin.html*.

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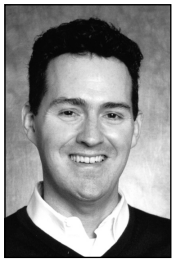
CALIFORNIA UPDATE
New California Employment Statutes for 2003

by Stephen D. Leanos



California has enacted several new statutes of particular interest to employers. Unless indicated otherwise, these statutes were effective on January 1, 2003. Among the new statutes:

California "WARN" Act

California has enacted a state version of the federal Workers Adjustment and Retraining Notification (WARN) Act, which prohibits employers from executing mass layoffs, plant closures, or relocations in covered establishments without at least 60 days written notice. Assembly Bill 2957 is similar to the federal WARN Act, but contains important differences. In summary, the federal WARN Act applies to business enterprises with at least 100 employees who conduct a "plant closing" or a "mass layoff." AB 2957 is broader in scope - it applies to any industrial or commercial facility or part thereof that employs or has employed as few as 75 employees at any time within the 12 months before a mass layoff, closure, or relocation of operations, and defines a "mass layoff" as a layoff during any 30-day period in which as few as 50 employees at a facility are terminated because of lack of funds or lack of work. Notices required

"Assembly Bill 2957 is similar to the federal WARN Act, but contains important differences."

under AB 2957 must conform to federal law standards, and be given to all affected employees, California's Employment Development Department, any local workforce investment board, and the chief elected official of each city and county government within which the layoff, relocation, or closure occurs.

As with the federal WARN Act, there are exceptions from the notice requirements of AB 2957 for project-based employment in certain industries such as entertainment and construction, seasonal employment, terminations necessitated by physical calamity or act of war, and faltering businesses. However, there is no exception from AB 2957 as exists under federal law for layoffs arising from the sale of a business. Thus, an asset sale could trigger the notice requirements under AB 2957 even if the seller's employees are immediately rehired by the buyer. Remedies available under AB 2957 include back pay to each affected employee for up to 60 days and the value of lost benefits, as well as attorneys' fees and costs. Given the different standards and substantial liability for violations of these two statutes, all layoffs in California must be analyzed under both the federal WARN Act and its California counterpart.

Paid Family Leave

Senate Bill 1661 creates a new state disability insurance program - Family Temporary Disability Benefits (FTDB) - for employees unable to work because of a family member's serious health condition which "warrants the participation of the employee" or for the birth, adoption, or foster placement of a child. The term "family member" includes a domestic partner, the "serious health condition" has the same definition as used in the federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA), and FTDB benefits would run concurrently with FMLA/CFRA leave. Although FMLA/CFRA eligibility criteria are not specifically incorporated, legislative history suggests that SB 1661 is not intended to create any new leave entitlement but rather to provide compensation during otherwise available FMLA/CFRA leave unpaid by the employer.

An eligible employee may receive up to six weeks of FTDB benefits in any rolling 12-month period. Benefits are capped at 55% of an employee's weekly wage up to a defined maximum, and are subject to a 7-day waiting period. Although an employer may require an eligible employee to take up to two weeks of earned but unused vacation time before receiving FTDB benefits, the

"[L]egislative history suggests that SB 1661 is not intended to create any new leave entitlement but rather to provide compensation during otherwise available FMLA/CFRA leave unpaid by the employer."

vacation time can be applied to the 7-day waiting period. Employees will pay for this benefit with increased SDI withholding commencing in January 2004, and can receive benefits beginning on July 1, 2004.

Age Discrimination Prohibitions Expanded

Although current law prohibits age discrimination in hiring, suspension, demotion, or termination of employment, AB 1599 adds age discrimination as an unlawful employment practice under the Fair Employment and Housing Act (FEHA). This provision overturns the decision of the California Supreme Court in *Esberg v. Union Oil Co. of California*, which held that discrimination in training programs on the basis of age did not violate the FEHA. The new provision clarifies that it is permissible to base promotion and hiring decisions on experience and training, rehire employees based on seniority and prior service, and hire from high schools, trade schools, and colleges through recruiting programs.

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Leave for Sexual Assault Victims
AB 2195 requires employers to offer to sexual assault victims or parents whose children become sexual assault victims unpaid leave for medical attention, psychological or crisis counseling, related court matters, and to participate in safety planning programs.

Illegal Workers' Rights
SB 1818 provides that all state law employment protections, except reinstatement rights prohibited by federal law, are available to illegal workers, and that immigration status be disregarded in the enforcement of California civil rights, labor, and employment laws. This provision was passed in an attempt to mitigate the effect of the U.S. Supreme Court decision in *Hoffman Plastics v. NLRB*, which held that the federal Immigration Reform and Control Act of 1986 precluded back pay awards to undocumented aliens who had been victims of unfair labor practices because they had not been authorized to work in this country.

Inspection of Payroll Records
AB 2412 amends Labor Code §226 to permit current or former employees to inspect or request copies of his or her payroll records within 21 days of the request.

Employees May Disclose Working Conditions
Former Labor Code §232 prohibited an employer from, among other things, requiring as a condition of employment that employees refrain from disclosing their salaries. AB 2895 extends this to also prohibit compelled non-disclosure about working conditions. This section does not affect an employer's right to prohibit non-disclosure of proprietary information, trade secrets, or information subject to legal privilege.

No-Fault Attendance Policies
SB 1471 makes it a violation of Labor Code §233 to count sick days taken to care for an ill child, parent, spouse, or domestic partner as absences that may lead to or result in discipline, discharge, demotion, or suspension under "no-fault" attendance policies.

New Summary Judgment Rules
New procedural rules require parties filing motions for summary judgment to provide at least 75 days notice before the motion hearing, as opposed to 28 days under former law. This change means that a party opposing summary judgment will now have two months to prepare its opposition rather than the two weeks provided under the former law, and will likely make summary judgment more difficult to obtain.

Extension of Statute of Limitations for Personal Injury Claims
SB 688 doubles to two years the statute of limitations in which to bring tort claims for personal injuries.

Tax Withholding on Stock Options and Bonuses
Employers generally use applicable wage withholding tables to determine the amounts they must withhold from wages for California state income tax, but have been permitted to withhold a flat 6% from supplemental wages such as bonuses, overtime, commissions, and back pay. AB 2065 raised the withholding rate to 9.3% for "stock options and bonuses" paid on or after January 1, 2002. Although it did not enforce this withholding provision during 2002, the Employment Development Department intends to require, as of January 1, 2003, withholding at the higher rate on qualifying compensation.

These are brief summaries of the new statutes discussed, and do not address all of their terms or effects. Employers should consult legal counsel if issues arise under these new statutes.

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Background Checks and Investigations in California

Amendments to California's Investigative Consumer Reporting Agencies Act (ICRA), effective on January 1, 2002, imposed burdensome notice, consent, and disclosure obligations on employers who conduct background checks and other investigations on applicants and employees whether through an "investigative consumer reporting agency" (CRA) or with information gathered themselves. Emergency legislation effective on September 28, 2002 amended the IRCA to conform in most - but not all - respects with the federal Fair Credit Reporting Act (FCRA). These new amendments to the IRCA now require the following from employers:

If the employer uses a CRA to conduct a background check or investigation on an applicant, the employer must:

- Provide written disclosure before any report is procured which states that an investigative consumer report may be obtained; the purpose of the report; that the investigation may seek information on the applicant's character, general reputation, personal characteristics, and mode of living; the name, address, and telephone number of the CRA; the nature and scope of the investigation that will be requested; and a summary of the applicant's rights under the ICRA;
- Obtain the applicant's written consent/authorization on a document separate from the disclosure;
- Provide a written document (this can be the consent/authorization form) with a box the applicant can check to request a copy of the report;
- Comply with that request either by providing a copy of the report within three business days of receipt by the employer or arranging for the CRA to provide a copy of the report directly to the applicant within that time period; and

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CALIFORNIA UPDATE: Background Checks and Investigations (cont'd)

• Advise the applicant if employment is denied based in whole or in part on information contained in the report and provide the name and address of the CRA who made the report.

While the ICRA does not require that a copy of the report be provided unless requested by the applicant even if an adverse employment action is based in whole or part on the information in the report, the FCRA does require the employer to furnish a copy of the report as well as the FCRA notice of adverse action in such circumstances whether expressly requested by the applicant or not.

If the employer uses a CRA to conduct a background check or investigation on an employee, the employer must comply with the above, except that the employer is excused if the report is procured in connection with investigating a suspicion of wrongdoing or misconduct by the employee being investigated. However, the FCRA has no similar misconduct exception, so a copy of the report and the required FCRA notice of adverse action must be provided if adverse action is taken based in whole or in part on the information in the report.

If the employer conducts its own background check or investigation on an applicant, the employer must:

• Make available on the application form or other document a box the applicant can check waiving the right to receive a copy of any public record information (records of arrest, indictment, conviction, civil judicial action, tax lien, or outstanding judgment) obtained by the employer without using a CRA;

• Unless waived, provide within seven days of receipt a copy, or oral report if learned orally, of any public record information obtained about the applicant; and

• Provide a copy of the public record if employment is denied based in whole or in part thereon, even if the applicant has waived the right to receive it.

"[U]se of an online or other database may constitute use of a CRA and require compliance with the more stringent notice and disclosure burdens applicable to their use..."

If the employer conducts its own background check or investigation on a current employee, the employer must:

• Comply with the above, except the employer may withhold public record information obtained during an investigation for the employee's suspected wrongdoing or misconduct until the investigation is completed, unless the employee has waived the right to receive it altogether; and

• Provide the public record information if an adverse employment action is taken based in whole or in part on the public record information obtained as part of the investigation for suspected wrongdoing or misconduct, even if the employee has waived the right to receive it.

Because use of an online or other database may constitute use of a CRA and require compliance with the more stringent notice and disclosure burdens applicable to their use, employers should consult with counsel to determine applicability of the ICRA and FCRA in such circumstances.

Violations of the ICRA can result in awards of $10,000 or actual damages (whichever is greater), attorneys' fees and costs, and punitive damages if the result of gross negligence or willful conduct. As noted above, California employers must also comply with the FCRA, which provides a distinct set of requirements for employers using an outside investigation agency.

In addition, a companion bill amended Civil Code §47(c) to extend the qualified privilege for job references to now include information provided to a prospective employer based upon credible evidence and without malice concerning eligibility for rehire. However, as with job references, employers should determine whether they wish to provide this information, and should create and enforce procedures to prevent selective disclosure of this potentially sensitive information.

Employment & Labor Law Department Continues to Grow

Theresa L. Hillhouse recently joined the Anchorage office of Preston Gates & Ellis as of counsel. Theresa's practice focuses on management labor relations, representing private and public employers before federal and state courts, as well as federal, state and local compliance agencies, adjudicatory boards, and committees. Theresa provides advice and legal defense concerning employment issues and claims including employee discipline and discharge, adverse employment actions and wrongful discharge, employee constitutional rights and tort claims, benefits and wages, disability and injury/sick leave, workplace harassment and discrimination, and union relations.

Passing the Torch

In January, Steve Peltin became chair of Preston's Employment & Labor Law Department, replacing Lynn Du Bey, who had held that position since April 2000. We are confident that Steve will continue Lynn's superb leadership under which the Department remained one of the premier labor and employment practices in the Northwest.

Labor Law Update

by Mark S. Filipini

The National Labor Relations Act ("Act") governs industrial relations for the majority of employers in the private sector. Section 7 of the Act grants covered employees the right to engage in protected concerted activity for mutual aid or protection. Such protected concerted activities include steps taken by employees ranging from filing grievances with management to coordinating work stoppages in protest of working conditions. Two recent decisions by the National Labor Relations Board ("Board") illustrate the scope and application of Section 7 in the workplace.

Section 7 Rights of Non-Union Employees to Engage in Protected Concerted Activities

A recent Board decision reminds employers that Section 7 protects *all* covered employees, not just those represented by a union or even those formally seeking union representation. In *JCR Hotel, Inc.*, the Board concluded that the employer committed an unfair labor practice when it discharged an unrepresented employee at least in part for suggesting that her fellow employees join her in a walkout to protest the discontinuance of a free meal for the housekeeping staff. The Board found the statement was protected concerted activity even though the employee admitted she made the comment in an off-hand manner and was not serious about organizing a walkout. Despite testimony from coworkers as to her abrasive manner, the Board rejected the employer's position that it discharged the employee solely because of her poor interpersonal skills and ordered the employee reinstated with back pay. Employers should take heed that the Board will enforce the Section 7 rights of non-unionized employees to engage in protected concerted activity for mutual aid or protection, and that an adverse job action even partially based on such protected activity may constitute a violation of Section 7.

Employee's Profane Outbursts Unprotected by Section 7

In *Aluminum Company of America*, the Board concluded that a union employee's profane outbursts were not protected by Section 7. Upset with the employer's handling of an overtime issue (for which he had a grievance pending) as well as a supervisor's performance of bargaining unit work, the employee angrily denounced management in the employee break room on two occasions. The employee was discharged for this behavior. While conceding that protesting these issues otherwise constituted protected concerted activity, the Board concluded that the employee's conduct lost the protection of Section 7 based on the combination of three factors. First, the outbursts took place in a break room and not in face-to-face meetings with management to air his complaints. Second, the employee's profanity far exceeded that which was common and tolerated at the employer's workplace. Third, the excellent labor relations record of the employer, including its prompt processing of grievances in the past, negated the employee's argument that he lost his temper because he thought the employer was retaliating against him for filing a grievance. While the Board's decision in *Aluminum Company of America* demonstrates that an employee's Section 7 protection may be lost through his misconduct, employers should be aware that employee protests of workplace conditions or events may be protected concerted activity.

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Changes in Washington Employment Laws in 2003

By Heather J. Nason

There are significant changes in Washington employment laws and regulations scheduled to take effect in 2003.

Use of Paid Time Off to Care for Family Members

Washington employers are now required to permit employees to use paid leave to care for sick family members. Under the Family Care Expansion Act (FCEA), an employer must permit an employee to use all of his or her accrued sick leave and other paid time off - defined as the time allowed an employee for illness, vacation, and personal holiday under an applicable collective bargaining agreement or employer policy - to care for a biological, adopted, or foster child, stepchild, legal ward, or child of a person standing in loco parentis with health conditions requiring treatment or supervision, or for a spouse, parent, parent-in-law, or grandparent who has a serious health or emergency condition. Unlike the federal Family and Medical Leave Act (FMLA) or the Washington Family Leave Act (WFLA), there is no threshold under the FCEA of employer size, time on the job, or hours worked. However, an employee may not take leave under the FCEA until it has been earned.

Increase in Industrial Insurance Premiums

Washington's Department of Labor and Industries (DLI) has adopted increases in industrial insurance (workers' compensation) premiums for 2003 averaging 29 percent. This is the first general rate increase in eight years, and is necessary to offset rising medical costs, an increase in claims frequency, and court-ordered increases in worker benefits.

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Washington Adopts Regulations Defining Payment on a "Salary Basis" for Salaried Exempt Workers

by Patrick Madden

In *Drinkwitz v. Alliant Techsystems, Inc.*, the Washington Supreme Court noted the lack of State regulations addressing what it means to pay an exempt executive, administrative, or professional worker on a "salary basis" and chose to partially depart from the federal regulations on the salary basis issue. However, the Court did not provide much meaningful guidance to employers on this issue. The Washington Department of Labor and Industries has now adopted regulations to fill that void - WAC 296-128-532 and 296-128-533 - which went into effect on February 21, 2003.

The new State regulations parallel the relevant federal regulations in most respects. For instance, the federal and new State regulations both provide that (1) an exempt worker must receive a predetermined monetary amount for any week in which he or she performs any work regardless of the quantity or quality of work performed, and (2) an exempt worker need not be paid for any workweek in which he or she performs no work. The federal and new State regulations also agree that an employer may make certain deductions in an exempt worker's pay without negating his or her salaried status, including:

- Deductions in "full day increments" for personal absences from work of one day or longer;
- Deductions for absences due to sickness or disability lasting one day or longer if done in accordance with a bona fide plan, policy, or practice of providing compensation for loss of salary occasioned by both sickness and disability;
- Deductions that result from good faith penalties for infractions of safety rules of major significance;
- Deductions that result in partial payments for the first and last weeks of employment;
- Deductions for partial day absences taken in accordance with the intermittent leave requirements of the FMLA; and
- Deductions for partial day absences made by a public employer that are pursuant to a statute, ordinance, regulation, or policy or practice established according to the principles of public accountability.

In addition, the federal and new State regulations both identify certain circumstances where exempt status may be lost if an employer makes deductions from an exempt worker's predetermined salary. Such prohibited deductions include:

- Deductions for absences caused by the employer or its operating requirements, such as breakdowns of machinery, snow days, etc.;
- Deductions for absences involving civic responsibilities such as jury duty, attendance as a witness, and temporary military leave (however, an employer may offset any compensation an exempt worker receives for these activities against the salary the employer would otherwise pay);
- Deductions for partial day absences (other than for FMLA intermittent leave or by public employers); and
- Deductions due to discipline for violations of ordinary work rules (other than for violations of safety rules of major significance).

Finally, the federal and new State regulations agree that an employer may provide an exempt worker with additional compensation or paid time off beyond his or her predetermined salary without endangering the worker's exempt status.

There are, however, two significant differences between federal interpretations and the new Washington State regulations:

- Federal and State law treat deductions from leave banks differently. Under federal interpretations, accrued leave banks are not considered part of an exempt worker's predetermined salary; thus an employer may reduce an exempt worker's leave time in any increment to offset for partial day absences. In contrast, the new Washington regulations make clear that paid leave is considered part of an exempt worker's salary. The regulations provide, however, that a private employer may make deductions from bona fide leave banks in increments of an hour or more so long as the worker makes an "express or implied request" for time off from work and the leave policy or agreement is in writing. The regulations also provide that a public employer may make deductions in any increment in accordance with any statute, ordinance, regulation, or policy or practice established according to the principles of public accountability.
- Federal and State law also establish different requirements if an employer discovers and wants to correct past violations of the salary basis requirements. Under the federal "window of correction," an employer can escape liability whenever (1) the improper deductions were either inadvertent or made for reasons other than lack of work, (2) the employer repays the improperly deducted amounts, and (3) the employer promises to comply with the salary basis requirements in the future. In contrast, the new Washington State regulation provides for a much narrower window of correction: To take advantage of this window, any improper deductions must be "infrequent and inadvertent" and promptly resolved when brought to the attention of the employer.

After years of uncertainty following the *Drinkwitz* decision, Washington employers now have reasonably clear guidance on the salary basis issue at both the federal and State levels. Every employer should take this opportunity to review its compensation policies to assure that the exempt status of its executive, administrative, and professional workers is preserved.

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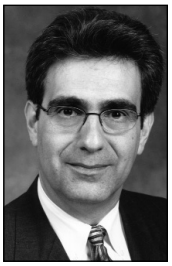
IN THE NEWS

Items Of Interest To Employers

By Mark Tuvim



Minimum Wages in 2003

The following hourly minimum wage rates were in effect as of January 1, 2003 in the states indicated:

Alaska	increased to $7.15
California	remained at $6.75
District of Columbia	remained at $6.15
Idaho	remained at $5.15
Maryland	remained at $5.15
Oregon	increased to $6.90
Virginia	remained at $5.15
Washington	increased to $7.01

Minimum wages in Alaska, Oregon, and Washington will adjust yearly based on changes to the Consumer Price Index. Maryland and Virginia each adopt by state law the federal minimum wage, and the District of Columbia pegs its minimum wage at the federal minimum plus $1. There are exceptions in some jurisdictions to these basic rates such as training wages or industry-specific minimums that may be applicable.

Washington Public Employees Can File Lawsuit Even After Losing Before PERC

In *Smith v. Bates Technical College*, the Washington Supreme Court held that public employees could file a tort claim in superior court for wrongful discharge in violation of public policy without having to exhaust their contractual or administrative remedies before the Public Employee Relations Commission (PERC). In *Christensen v. Grant County Hospital District No. 1*, the Washington Court of Appeals extended *Smith* and concluded that an adverse ruling before PERC on an unfair labor practice claim did not preclude an employee from filing a separate tort claim arising from the same alleged conduct. The *Christensen* court explained that "the tort's objective is not to enforce the terms and conditions of the employee's contract but rather the public's interest in preventing employers from treating employees in a manner offensive to fundamental public policy." Washington public employers should be aware of the potential two-pronged attack they now face before PERC and the courts, address situations accordingly, and ensure that releases and settlement documents address all potential claims.

No Employer Liability Under California Law for Worker Harassment by Customers

The California Court of Appeals has ruled in *Salazar v. Diversified Paratransit Inc.*, that an employer may not be held liable under the state's Fair Employment and Housing Act to an employee who has been sexually harassed by a client or customer. The court explained that while an employer has managerial and disciplinary power over employees and therefore can be held responsible for their conduct, it generally has no such power over its clients and customers. The court refused to expand liability based upon an employer's statutory obligation to maintain a workplace free from illegal harassment and discrimination. The ruling takes a position contrary to several decisions rendered under federal law which have assumed without analysis the possibility of an employer's liability for harassing conduct of clients and customers.

However, the reasoning of the court - reliance on an employer's lack of power over a client or customer - may not preclude an employer's potential liability where the employer either knows or should have known of the harassment and fails to act appropriately. An employer may be able to reassign an employee in order to minimize contact with the offending client or customer - for example, a restaurant can change the table assignment of a waitress who reports harassment by a customer, or possibly exclude the customer. An employer may also be able to insist that a supplier (especially one who wants to keep the account) send a different delivery person to its premises, or ask in certain situations that a client assign different personnel to the project.

Washington Law Provides Disability-Based Hostile Environment Claim

The Washington Supreme Court has confirmed in *Robel v. Roundup Corporation, d/b/a Fred Meyer, Inc.*, that unwelcome harassment imputable to an employer based on disability is actionable under the state's anti-discrimination statute. Ms. Robel was harassed by a supervisor and co-employees while on light-duty after she sustained a workplace injury and filed a workers' compensation claim. The decision affirmed the trial court's verdict finding the employer liable for disability discrimination, retaliation for filing a workers' compensation claim, and intentional infliction of emotional distress (outrage). This ruling is generally consistent with interpretations of federal courts construing the Americans with Disabilities Act (ADA) to provide for such hostile environment claims.

California Courts Cannot Bar Action in Other State to Enforce Non-Competition Agreement

California law prohibits the enforcement of non-competition agreements except in limited circumstances such as the sale of a business. California courts have refused to enforce non-competition agreements executed in other states prior to the employee's relocation to California, and one California trial court issued an order purporting to restrain a lawsuit filed in Minnesota seeking to enforce a non-competition agreement against a former employee who had moved to California. However, in *Advanced Bionics Corporation v. Medtronic, Inc.*, the California Supreme Court ruled that such a restraining order violated the relationship between courts in sister states. Out-of-state employers may have potential recourse in their own local courts to enforce non-competition agreements against former employees who now work in California. However, whether a California court will enforce an out-of-state judgment which is against the state's public policy, remains to be seen.

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UPDATE

HOW TO REACH US

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