RIGHTS STUFF

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Man Loses Age Discrimination Lawsuit

Ronald Gigliotti was born in 1938. In 1988, he was hired as an environmental manager by Aero Metals, Inc., a company in LaPorte, Indiana that manufactures and supplies cast components. He was a full-time, salaried employee.

In 2004, he asked to become a part-time employee, working 20 to 25 hours a week, doing daily monitoring of emissions, maintaining permits, doing research, updating databases and preparing reports. His request was granted.

In 2007, the company looked at ways to reduce its operating losses. As part of that process, Aero asked Gigliotti to create a time record of all of his activities for one week. He did so, and his supervisors decided that his position did not provide the company with enough value to justify the expense of keeping him. They believed there were other, more affordable ways to get his work done.

At about the same time, Gigliotti asked for a raise. His request was denied. His supervisor told him he was already one of the highest paid employees at the company.

Aero fired Gigliotti in 2008, the only employee the company fired that year. But Aero did fire 79 employees (out of a total of 390) in January of 2009. Gigliotti sued, alleging age discrimination, and lost.

Gigliotti said that a younger man took over his job duties. But the evidence showed that a younger man took over only some of his job duties. Gigliotti was not replaced, or at least not totally replaced, by a younger employee.

Gigliotti also argued that the fact that he was the only employee fired in 2008 was evidence that he was singled out because of his age. But the company showed that in 2008, it took a number of other steps to control costs, and in 2009, as noted previously, it fired more than 20% of its workforce.

And he argued that the timing between his request for a raise and his termination was "suspicious." But he couldn't recall for sure if he had asked for a raise in early 2007 or early 2008. Even if his request for a raise came close to his termination, that by itself is not evidence of age discrimination. He was told when he asked for a raise that he was one of the company's highest paid employees, at a time when it was trying to reduce costs.

The Court said that Aero had a legitimate, non-discriminatory reason for terminating Gigliotti: his termination was part of an ongoing initiative to assess and lower its operating costs. Since his termination, his duties have been performed by other employees and external entities, apparently at little or no additional cost to the company. ♦

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Religious Discrimination In The Workplace

Evelyne Shatkin and Linda Shifflett both worked for the University of Texas - Arlington as administrative assistants.

UTA has a written policy protecting employees' freedom of speech, expression and assembly in the workplace. UTA employees may pray, talk about religious matters, express their beliefs in staff meetings, participate in Christmas (and presumably other religious) celebrations and have religious objects on their desks.

In 2006, Shatkin, Shifflett and Doug Maples, a co-worker, began talking about problems that Maples was having with Evelyn Knight, a co-worker. Maples had yelled at Knight, in front of others, that Knight was "really mean," making Knight cry. After this, Maples was reprimanded. Shifflett had been verbally reprimanded for yelling at Knight repeatedly, and Shatkin and Knight had been ordered to attend formal mediation to resolve their personal conflicts. The three decided to pray together about the situation.

On March 3, 2006, at 5:30 p.m., Shatkin, Shifflett and Maples met at Knight's cubicle, a day they knew she would not be there. Shatkin prayed and, following her religious tradition, rubbed olive oil on the doorway to the cubicle. The oil is supposed to invoke the presence of the Holy Spirit. She said she prayed Knight "to have peace, joy, deep joy." Then, according to Maples, Shatkin "started . . . chanting, her voice accelerated, it got very loud, it amplified in the office. It wasn't a normal tone, and she started chanting, 'I command you demons to leave Knight, you vicious evil dogs get the hell out of here in the name of Jesus, get the hell out of Knight!'"

Maples said he was offended by the nature of the prayer but didn't say anything to the two women. He reported the incident to his supervisor a few days later. The two women were told that their behavior had been inappropriate and they had misused University resources. They requested a religious accommodation to be allowed to engage in prayers at work in a non-disruptive manner and during non-work time. Their requests were not acted on; instead they were fired, and they sued.

The Court explained what the women needed to show to win a *prima facie* case of discrimination: they were members of a protected class, they were qualified for their positions; they were subjected to adverse employment actions because of their protected class and they were treated less favorably than others similarly situated. They met the first three elements; the only question for the Court was whether they were treated less favorably than others similarly situated.

Maples was not disciplined. UTA maintained that he was not similarly situated because he reported the incident and because he had not been disciplined for prior conflicts with Knight. But the Court said that all three were involved in the same incident and only two were disciplined; this means they were similarly situated. Shifflet said that Maples had prayed with them. And Maples, in fact, had been disciplined for problems with Knight.

The Court said that the plaintiffs had no obligation to notify UTA of their intent to pray at Knight's cubicle before they did so. They said that since Knight didn't learn of the prayer until two months later, the plaintiffs could not have harassed her. The Court noted that Maples had not been fired when he made Knight cry and it was hard to agree with UTA that praying for Knight in her absence was "more egregious" than making her cry.

The plaintiffs defeated UTA's motion for summary judgment and the case will now proceed to trial.

The case is Shatkin and Shifflet v. University of Texas at Arlington, 2010 WL 2730585 (N.D. Texas 2010). ♦

Woman Wins Right To Proceed To Trial

Erika Riley-Jackson is an African American woman who worked as a cocktail waitress for Casino Queen from December, 2001 until January, 2007. She was suspended and then fired for having "four absences in a four-week period and calling off in a pattern." She sued, alleging race discrimination. Casino Queen moved for summary judgment, meaning it felt she had no case at all, and lost.

Ms. Riley-Jackson said she knew of two white waitresses who called off in a pattern and were not fired. She said that another white waitress would "make her money and leave," apparently before the end of her shift, without consequences. She gave a number of other examples of unfair treatment:

- She was written up for walking through the kitchen. Two white waitresses did the same thing and were not written up.
- She was written up for not signing out at the end of her shift. But management was willing to sign out for several white waitresses.
- She was not given help when she was "unbearably" busy; instead, she was written up. But when white waitresses were busy, management helped them out.
- She was written up for having 11 glasses on the floor. A white waitress had 15 glasses on the floor and was not written up.
- She was suspended for not showing up to work. When a white waitress didn't show up for work, management called her to remind her she needed to be at work.
- She sought extra shifts, but management gave those shifts to white waitresses.
- Management would send a white waitress with less seniority to the "money-making floor" instead of sending an African American waitress with more seniority.
- She asked to be assigned to work a golf tournament, which would have been a lucrative job. The restaurant allegedly never assigned African American waitresses to work special events.
- Her supervisor told her once that "every Black person I know basically did drugs or sold drugs."

The Court said these allegations were enough to defeat the restaurant's motion for summary judgment and to let the matter go to trial. The case is Riley-Jackson v. Casino Queen, Inc., 2010 WL 4590969 (S.D. Ill. 2010). ♦

Clinic Settles Fair Housing Case

Two sisters, Pia and Giovanna Bernardi, live together in the Chicago area. Pia has had disabilities since she was a child; she can't read or write, and if she didn't live with her sister, she would likely have to live in an institution. She has lived with her sister since their parents died.

Pia, because of her disabilities, receives government assistance. Giovanna works outside the home. The Lake County Housing Authority said that it had to include Giovanna's outside earnings as part of the family's income in determining whether Pia was eligible for a housing voucher. The sisters, instead, said that the housing authority should recognize Giovanna as a live-in aide.

The authority's policies exclude the income of a live-in caregiver from its calculation of the household income. But, they had a policy against family members serving as live-in aides. They threatened to evict the sisters and terminate Pia's housing unless Giovanna reported her income as part of the household's income.

The John Marshall Law School Fair Housing Center and Clinic sued on the sisters' behalf. After the judge issued a temporary restraining order preventing the housing authority from evicting Giovanna or terminating Pia's housing voucher, they settled. The authority agreed to recognize Giovanna as a live-in aide, to pay $40,000 in damages to the sisters, to pay $20,000 in attorney's fees and to change its policy about family members serving as aides. ♦

BHRC Announces Winners Of 20th Annual Essay/Art Contest

The BHRC has announced winners of its 20th annual essay/art contest for local students. The theme this year was "Why I Care About Diversity."

The essay winners at the younger student level were first place, Ava Crees, Childs; second place, Emma Rodes, University; and tied for third place, Luke Smethurst, Childs and Melina Raglin, University. The essay winners at the older student level were first place, Mac Vogelsang, Tri-North; tied for second place Emily Long, Clear Creek; and Adam Diersing, Templeton; and third place, Katcha Papesh, Pinnacle School.

The art winners at the younger student level were first place, Mrs. Smith's Third Grade Class, Childs; second place, Noah Moore, University, and tied for third place Anna Crombar, Rogers and Child's Thursday Morning Art Class. The older student art winners were first place, Stella Winterman and Sarah Berry, Jackson Creek; second place, Milo Roeder and Robby Gonyea, Templeton; and third place Jordan Shields and Jackson Mahuron, Lakeview. Congratulations to these students!

The judges of this year's contest were commission members Luis Fuentes-Rohwer, Prof. Carolyn Calloway-Thomas and Emily Bowman. Thanks to them for a difficult job. ♦

Need Help? Dial 2-1-1

2-1-1 is available 24/7 and is staffed by certified call specialists who can connect you with the help you need. 2-1-1 is your connection to food, housing, employment, counseling, health care, senior services, child care and more. This free and confidential program, available in more than 150 languages, is your link to community services.

For more information, call 2-1-1 or visit www.211infolink.org. ♦

IRS Scrutinizing Nonprofits More

The IRS has announced that it plans to more closely scrutinize nonprofit organizations in 2011. In 2008, the IRS audited 7,861 charities; in 2009, 10,187; and in 2010, 11,449.

The IRS said that it plans to evaluate loans that nonprofit organizations make to their top officials and to make sure that the organizations paid the required employment taxes.

The IRS plans to evaluate other organizations more closely as well, including consumer credit counseling agencies and down-payment assistance groups.

If you work with or for a nonprofit organization and have questions about your rights and responsibilities under various tax laws, consult your tax advisor. ♦

DOJ Publishes New ADA Primer For Small Businesses

The U.S. Department of Justice just published a new booklet called "ADA Update: A Primer for Small Businesses." It covers topics such as service animals, wheelchairs and other mobility devices, communicating with customers who have disabilities, accessibility requirements and more. You can get a copy by going to www.ada/gov/regs2010/smallbusiness/smallbusprimer2010.htm., or by the calling the BHRC. ♦