HRHero.com
A division of BLR®

FLORIDA
EMPLOYMENT LAW LETTER

Part of your Florida Employment Law Service

Tom Harper, Managing Editor • Law Offices of Tom Harper
Lisa Berg, Andrew Rodman, Co-Editors • Stearns Weaver Miller, P.A.
Robert J. Sniffen, Jeff Slanker, Co-Editors • Sniffen & Spellman, P.A.

Vol. 27, No. 12
February 2016

What's Inside

What's Online

Video
Why should employers consider offering paid leave?
http://ow.ly/WHkjO

Wages
White-collar exemptions from overtime explained
http://ow.ly/WANEz

Strategic HR
Evaluate new HR strategies like you interview new hires
http://bit.ly/1OeyTeZ

Find Attorneys
To find the ECN attorneys for all 50 states, visit
www.employerscounsel.net

ECN EMPLOYERS COUNSEL NETWORK
EMPLOYERSCOUNSEL.NET

LABOR LAW

NLRB finds employer's prohibition on workplace recordings unlawful

by Lisa Berg
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.

On December 24, 2015, the National Labor Relations Board (NLRB) held in a 2-1 decision that Whole Foods Market, Inc.'s blanket rules prohibiting employees from recording, without management approval, company meetings, conversations with co-workers, and images violated the National Labor Relations Act (NLRA). The Board's ruling has broad implications at a time when practically every employee carries a smartphone or some other recording device.

Workplace rules at issue

At the center of this case were the following two rules in Whole Foods' "General Information Guide" (similar to an employee handbook):

> **Team Meetings:** It is a violation of Whole Foods Market policy to record conversations, phone calls, images or company meetings with any recording device (including but not limited to a cellular telephone, PDA, digital recording device, digital camera, etc.) unless prior approval is received from your Store/Facility Team Leader, Regional President, Global Vice President or a member of the Executive Team, or unless all parties to the conversation give their consent. Violation of this policy will result in corrective action, up to and including discharge.
>
> **Team Member Recordings:** It is a violation of Whole Foods Market policy to record conversations with a tape recorder or other recording device (including a cell phone or any electronic device) unless prior approval is received from your store or facility leadership. The purpose of this policy is to eliminate a chilling effect on the expression of views that may exist when one person is concerned that his or her conversation with another is being secretly recorded.

The United Food and Commercial Workers International Union, Local 919, filed an unfair labor practice charge challenging the no-recording rules. An administrative law judge (ALJ) dismissed the union's challenge to the policy, and the NLRB's General Counsel appealed.

NLRB's decision

Although Whole Foods' rules didn't explicitly restrict activities protected by Section 7 of the NLRA—a section that protects employees' right to engage in "concerted activity" for "mutual aid or protection"—the NLRB held

WORKPLACE TRENDS

Survey finds most employers keeping but modernizing performance ratings. Most North American employers plan to continue using performance ratings in spite of widespread dissatisfaction with their programs, according to a survey by global professional services company Towers Watson. Instead of scrapping their performance management systems, many employers report efforts to modernize their processes. Changes include replacing annual performance review cycles with more frequent employee and manager interactions, applying a more future-oriented definition of performance and potential, and implementing new technology.

Progress on work-life balance? Research from finance and accounting staffing firm Robert Half Management Resources finds that more workers and CFOs are enjoying more work-life balance. One survey released in December 2015 found that 77% of workers characterized their work-life balance as good or very good, and 45% reported they have greater balance than three years ago. A separate survey found that 82% of CFOs rated their work-life balance as good or very good. Twenty-two percent of workers and 17% of CFOs reported that their work-life balance was fair or poor. Fourteen percent of the workers said they have less balance now compared to three years ago.

Research pinpoints "hot jobs" for 2016. Researchers from CareerBuilder and Economic Modeling Specialists Intl. have compiled a list of in-demand jobs for 2016 for workers with or without college degrees. Among occupations that require a college education and have large gaps between job openings and hires, registered nurses, software developers (applications), marketing managers, sales managers, and medical and health services managers took the top five slots. Among jobs that don't typically require a college degree but have gaps between job openings and hires, heavy and tractor-trailer truck drivers, food-service managers, computer user support specialists, insurance sales agents, and medical records and health information technicians took the top five places.

Surveys show disconnect on benefits between retirees and employers. Surveys of retirees and employers show a gap between what retirees recalled they were told about their retirement medical benefits before they retired and what employers believe they communicated. The comparisons of surveys from global professional services company Towers Watson, released in December, found that 43% of retirees surveyed said their employers took no steps to help them understand and manage the cost of retiree medical benefits before they retired, but just 9% of employers acknowledged they offered no help. ✤

that employees would reasonably construe the rules to prohibit protected activity and would create a chilling, or dissuasive, effect on the exercise of their rights. In other words, employees would opt not to exercise their protected rights for fear of violating the overly broad recording policy.

According to the NLRB, taking photographs and making audio or video recordings in the workplace, as well as posting photographs and recordings on social media, are protected by Section 7 if employees are "acting in concert for their mutual aid and protection and no overriding employer interest is present." The NLRB gave the following examples of such protected concerted activity:

- Recording images of protected picketing;
- Documenting unsafe workplace equipment or hazardous working conditions;
- Documenting and publicizing discussions about terms and conditions of employment;
- Documenting inconsistent application of workplace rules; and
- Recording evidence to preserve it for later use in administrative or judicial forums in employment-related actions.

The Board also noted that there is support in its previous decisions that workers' rights have been vindicated with recordings and that broad rules could hinder workers' ability to gather evidence.

Not all prohibitions on recording are invalid

The NLRB acknowledged that some restrictions on workplace recordings may be lawful, depending on the type of business in which the employer is engaged. In that regard, the NLRB distinguished its 2011 decision in *Flagship Medical Center, Inc.*, in which it held that a hospital's policy prohibiting employees from using cameras to record images didn't violate the NLRA because employees would reasonably interpret the rule as a legitimate means of protecting patient privacy interests and the hospital's obligations under the Health Insurance Portability and Accountability Act (HIPAA).

Although the NLRB found that Whole Foods' business justification (i.e., encouraging open communication in town-hall meetings and peer panels hearing termination appeals) wasn't without merit, those circumstances were too narrow to justify such a broad, unqualified restriction on workplace recording.

As further support for its rules, Whole Foods had argued that nonconsensual recording is unlawful in many states in which it operates. The NLRB rejected that rationale, finding that the rules were still unlawful because they weren't limited to those states and didn't specify that the recording restrictions were limited to recordings that don't comply with state law. *Whole Foods Market, Inc.*, 363 NLRB No. 87.

Employer takeaway

The NLRB's opinion makes it clear that not all rules restricting employees' ability to record things in the workplace are

invalid. So, you can restrict recordings, but you have to be careful how you do it.

All employers should scrutinize any company policies that prohibit recording in the workplace. Broad policies that aren't narrowly tailored to protect a compelling business interest (e.g., trade secrets or confidentiality of patient information) and aren't limited to specific times and locations necessary to protect such interests may be ripe for challenge.

ANDY'S IN-BOX

Navigating the FLSA's 'on-call' rules

by Andy Rodman
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.

Employers in Florida (and around the country) should take notice of a lawsuit recently filed by a chauffeur in New York against the tech company Mezocliq, the company's CEO, and the CEO's wife. The case should be viewed as a reminder of the "on-call" rules under the Fair Labor Standards Act (FLSA).

At your service

The chauffeur says he worked as a personal driver for the CEO's family. He claims he took the CEO's wife on shopping trips and to meet her family and friends, he drove the CEO to business dinners and social engagements, he shuttled their children to and from school and extracurricular activities, and he drove the family to their Connecticut farm. During the summer months, he was allegedly required to remain near the farm Monday through Thursday night each week because he had to be available "at a moment's notice."

The chauffeur is seeking $37,000 in unpaid overtime, plus liquidated (double) damages, in part for the time he spent "waiting for a passenger." Is an employee entitled to compensation for time spent "waiting"? Yes—under certain circumstances, "waiting" or "on-call" time is considered compensable work under the FLSA.

Whether waiting time or on-call time is compensable is a fact-specific inquiry. The analysis boils down to the amount of control (if any) the employer exercised over the employee during the waiting or on-call time. If the employee is "waiting to be engaged," then the time generally isn't compensable, but if the employee is "engaged to be waiting," then the time generally is compensable.

Admittedly, the waiting to be engaged/engaged to be waiting dichotomy provides little practical guidance for employers (although it's the language used by many courts). So here's a nonexhaustive list of factors to consider when you're attempting to determine whether you must pay an employee for waiting or on-call time:

- Your agreement with the employee (if any) about whether the time is compensable (a factor, but not a dispositive one);
- Whether the employee must remain on your premises (or reasonably close) while he's waiting or on call;
- Whether the employee must report to work relatively quickly when he's called to work;
- How often the employee is actually contacted while he's on call or waiting; and
- The extent to which the employee can use the waiting or on-call time for his own purposes (e.g., Can he go shopping, out to dinner, to a movie, or home to sleep?).

Lucian Alexandrescu v. Mezocliq, LLC, Mezoventures, LLC, Vikas Kapoor & Jaishri Kapoor, Case No. 1:16-cv-00341, United States District Court, Southern District of New York.

Bottom line

While some cases may appear to have clear-cut answers, most will not. In fact, the above factors may provide conflicting answers, with some factors suggesting that waiting time is compensable and others suggesting it isn't. Make sure you consult with your employment law counsel before reaching any conclusions.

Andy Rodman is a shareholder and director at the Miami office of Stearns Weaver Miller. If you have a question or issue that you would like Andy to address, e-mail him at arodman@stearnsweaver.com or call 305-789-3256. Your identity will not be disclosed in any response. This column isn't intended to provide legal advice. Answers to personnel-related inquiries are highly fact-dependent and often vary state by state, so you should consult with employment law counsel before making personnel decisions. ✤

Florida requires the consent of both parties to record a conversation. As a result, it appears that employers operating in states like Florida must also specify that their restrictions on nonconsensual recording are limited to the states where nonconsensual recording is illegal. It's still unclear, however, whether the current NLRB would find compliance with state law a sufficient justification for a blanket no-recording rule.

Because this area of the law is quickly evolving and this case is now on appeal, you would be well-advised to consult with experienced labor counsel when drafting policies that restrict your employees' ability to use recording devices in the workplace.

Lisa Berg is an employment lawyer and shareholder at the Miami office of Stearns Weaver Miller. You may reach Lisa at lberg@stearnsweaver.com or 305-789-3543. ✤

GENDER IDENTITY

Jury will decide fired auto mechanic's claim of transgender discrimination

by Tom Harper
The Law and Mediation Offices of
G. Thomas Harper, LLC

In one of the first decisions on this issue from the federal appeals court over Florida, a three-judge panel has ruled that an auto mechanic who told her employer in October that she was transitioning from male to female and was then fired in January for sleeping on the job presented enough evidence to have a jury decide her case.

Background facts

Jennifer Chavez was hired to work as an auto mechanic for Credit Nation Auto Sales, LLC, in June 2008. She presented evidence that she was an excellent mechanic and was never disciplined until she announced in late October 2009 that she was having gender transformation surgery to become a woman. Ten weeks after her announcement, on January 11, 2010, Credit Nation fired her for sleeping while she was on the clock.

> **A female vice president of the company told her that she needed to "tone it down."**

During the pretrial exchange of evidence, Chavez admitted that she had slept for 40 minutes in a customer's vehicle while she was on the clock. Credit Nation presented evidence that it had fired other employees for sleeping on the job. The lower court therefore found the company's reason for firing Chavez was both a true and a legitimate reason, and it dismissed her case before trial. She appealed the dismissal of her claims to the U.S. 11th Circuit Court of Appeals (whose rulings apply to all Florida employers).

The lower court found that Chavez didn't present sufficient evidence to show that Credit Nation's reason for firing her was a "pretext," or excuse, for discrimination. On appeal, however, Chavez argued that she had presented sufficient circumstantial evidence that Credit Nation had a "discriminatory intent" and its bias was "a motivating factor" in her termination. She claimed that her firing was motivated not only by a legitimate reason (sleeping on the clock) but also by an impermissible reason (her transgender status).

A supportive employer?

James Torchia, the president of Credit Nation, personally approved the decision to fire Chavez. Credit Nation presented evidence that Torchia was accommodating of Chavez's gender change. For example, he agreed to give her an additional week of unearned vacation to allow her more time to recover from one of her surgeries.

After Chavez went public at work, she wrote a letter to an Atlanta newspaper in early November in which she praised her employer's support for her gender transition. In the letter, she stated that the president of Credit Nation was "very supportive," said she had "nothing to worry about," and assured her that he would make sure that "all employees understood [the company's] no-harassment policy." But against that backdrop, she presented evidence that she claimed pointed to discrimination as the motivation for her firing.

Chavez claimed that about a month after she announced her gender transition, she met with Torchia, who said he was "very nervous" about her plans. She claimed he told her that "he did not want any problems created for [her] or any of his other employees" because of her "condition" and blamed her for the company losing an applicant for a tech position. The court placed great weight on her claim that Torchia said he thought she was going to "negatively impact his business."

Chavez "baited" Torchia by asking him if it was "okay to talk about it" and "educate others about [her] condition . . . so they might understand and not be afraid." According to her, Torchia agreed, but "only if [she] was asked." Chavez claimed that the president admonished her that she "shouldn't bring it up."

The court also noted in its ruling:

> [At the] November 24 meeting, Torchia discussed what Chavez was allowed to wear to and from work. Even though Chavez changed into a uniform before her shift started and [changed back into her street clothes] shortly before leaving work each day, Chavez reports that Torchia

> asked her "not to wear a dress back and forth to work." After Chavez told [him] that she had not been wearing anything "outlandish" back and forth from work—"only . . . jeans and a top with tennis shorts"—Torchia said what Chavez had been wearing was acceptable, just so that she did not "wear a dress or miniskirt." Chavez asked about whether she could wear a dress to and from work once her gender transition was complete. Torchia said no. He said that "would be disruptive and any woman that wears a dress at the service department would be disruptive."

In addition, Chavez claimed that a female vice president of the company, Cindy Weston, told her that she needed to "tone it down," "not talk as much about her gender change in the shop," and be "very careful" because Torchia "didn't like" the implications of her gender reassignment. Chavez asserted that after she was fired, the shop foreman, Kirk Nuhibian, told her that he knew for a fact that she was "run out of" Credit Nation.

Chavez argued that the company didn't follow the progressive discipline policy in its employee handbook when it terminated her. The handbook laid out a four-step procedure for discipline and stated that certain misconduct "may result in immediate discharge." However, the conduct that Chavez engaged in—"sleeping while on the clock on company time," according to her termination letter—wasn't included on the list of offenses that could lead to termination.

Court's decision

At the start of its analysis, the appeals court reminded us that in 2011, it ruled that sex discrimination includes discrimination against a transgender person for gender nonconformity. The court then noted that an employee can establish causation by showing that gender bias "was a motivating factor" in her firing, "even though other factors also motivated her termination." The basis for that ruling is the following language from the Civil Rights Act of 1991:

> Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, *even though other factors also motivated the practice.* [Emphasis added.]

After reviewing all of Chavez's allegations and accepting them as true at this stage of the case, the appeals court believed she had enough evidence to allow a jury, not a judge, to decide if her firing was motivated by her gender transition. The three-judge panel, which included Judge Jose Martinez from the federal court in South Florida, therefore reversed the dismissal of the case and ordered a trial. *Jennifer Chavez v. Credit Nation Auto Sales, LLC,* Case No. 14-14592 (11th Cir., January 14, 2016).

Takeaway

It's a new world that we live in today. Some issues, including abortion, same-sex marriage, and gender reassignment, are still controversial, with some people not fully accepting of them. This case illustrates how negative comments and actions by supervisors, and even coworkers, can be used to show that an employer had an unlawful motive for an adverse action. Consider getting out front on such issues by conducting sensitivity training for your supervisors, which may help you avoid lawsuits.

You many contact the author at tom@employmentlawflorida.com. ✤

PUBLIC ACCOMMODATIONS

How far will DOJ extend ADA's Title II and Title III requirements?

by Monna Lea Bryant, Robert Sniffen, and Jeffrey Slanker
Sniffen & Spellman, P.A.

Retailers and businesses may soon need to begin preparing for a new public accommodations issue related to an altogether different kind of access barrier: websites. The U.S. Department of Justice (DOJ) is developing a plan to amend Titles II and III of the Americans with Disabilities Act (ADA) to require websites to become accessible to disabled users. The DOJ is concerned about the accessibility of websites operated by public entities, such as state and local governments, which are subject to Title II of the ADA, as well as those run by private-sector businesses actively involved in e-commerce, which may or may not be covered by Title III of the ADA.

Law on public accommodations

Individuals are statutorily protected from being denied access to public places or receiving poor service or lower-quality accommodations because of their race,

color, national origin, sex, disability, familial status, or religion. The ADA is the federal statute that provides those protections to all U.S. citizens, and the Florida Civil Rights Act of 1992 (FLCRA) provides such protections to residents of and visitors to Florida. Under the FLCRA, aggrieved individuals may file a complaint with the Florida Commission on Human Resources (FCHR).

Title III of the ADA and the FLCRA prohibit discrimination on the basis of a disability by "places of public accommodation," which are defined under the Florida law as:

> Lodgings, facilities principally engaged in selling food for consumption on the premises, gasoline stations, places of exhibition or entertainment, and other covered establishments. Each of the following establishments which serves the public is a place of public accommodation within the meaning of this section:
>
> (a) Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than four rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his or her residence.
>
> (b) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment, or any gasoline station.
>
> (c) Any motion picture theater, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment.
>
> (d) Any establishment which is physically located within the premises of any establishment otherwise covered by this subsection, or within the premises of which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.

Title III of the ADA is interpreted, for the most part, consistently with the public accommodations provision of the FLCRA. The two statutes serve the consistent purpose of prohibiting discrimination and access barriers in places of public accommodations to individuals with disabilities.

Although the statutes were constructed to afford expansive protections, the evolution of society inevitably uncovers new access barriers that weren't issues when the ADA and the FLCRA were implemented. Despite the laws' expansiveness, they will need to be amended to catch up with the changing times.

Upward trend in public accommodations cases (as reported by the FCHR)

FY	PA Cases Received	PA Cases Resolved	Closure Type Cause	Closure Type No Cause	Closure Type Administrative
2010-11	24	31	6	9	16
2011-12	27	26	9	10	7
2012-13	57	39	10	14	15
2013-14	68	73	39	24	10
2014-15	66	62	8	19	35

Background of Internet accessibility regulations

In 2010, the DOJ released an Advance Notice of Proposed Rulemaking (ANPRM) on website accessibility. The agency solicited comments on costs and alternatives to making websites accessible to individuals with disabilities, receiving approximately 440 public comments.

In its fall 2015 Statement of Regulatory Priorities, the DOJ again addressed website accessibility and discussed its plan to "amend its regulation implementing [T]itle II of the ADA to require public entities that provide services, programs or activities to the public through Internet [websites] to make their sites accessible to and usable by individuals with disabilities."

The DOJ is considering the changes in light of the ever-evolving electronic marketplace and increased disadvantage to individuals without website access, noting:

> The Internet as it is known today did not exist when Congress enacted the ADA, yet today the Internet plays a critical role in the daily personal, professional, civic, and business life of

> Americans. The ADA's expansive nondiscrimination mandate reaches goods and services provided by public accommodations and public entities using Internet [websites]. Being unable to access [websites] puts individuals at a great disadvantage in today's society, which is driven by a dynamic electronic marketplace and unprecedented access to information.

The agency is planning to separately publish Notices of Proposed Rulemaking (NPRMs) addressing Title II and Title III website accessibility. It currently expects to publish its Title II NPRM early in fiscal year (FY) 2016 and its Title III NPRM during FY 2018.

It's unclear what measures the DOJ will ultimately determine are necessary to make websites more accessible to individuals with disabilities. Some changes might include requirements to remove Completely Automated Public Turing Test to Tell Computers and Humans Apart (CAPTCHA) from computerized forms or add voice recognition or other keyboard commands.

The Web Accessibility Initiative (WAI) has created voluntary international guidelines for website accessibility to provide guidance on how sites can be more accessible to individuals with disabilities. The DOJ is using the WAI's Web Content Accessibility Guidelines (WCAG), available at www.w3.org/WAI/intro/wcag.php, to ground some of the conversations surrounding its Title II and Title III rulemaking proceedings.

What it means for Florida businesses

As the DOJ's rulemaking proceedings progress at a slow pace, companies involved in e-commerce should be prepared for affected individuals to use the legal system to address their concerns. Florida businesses should be aware that the impending rules will likely be applicable under the FLCRA. Florida has seen an increase in public accommodations litigation in recent years (see the table accompanying this article), and we expect that trend to continue as website accessibility becomes a more predominant issue.

With so much left in the hands of the slow-moving DOJ rulemaking process, it's difficult to predict when and how any changes to Title II and Title III of the ADA will alter website accessibility. However, the information currently available makes one thing clear: Public accommodations cases are on the rise, and we can expect that trend to continue if and when the DOJ amends the ADA.

Robert J. Sniffen is the founder and managing partner of the Tallahassee firm of Sniffen & Spellman, P.A. He can be reached at 850-205-1996 or rsniffen@sniffenlaw.com. Jeff Slanker and Monna Lea Bryant are attorneys with Sniffen & Spellman, P.A., in Tallahassee. Slanker and Bryant can be reached at 850-205-1996 or by e-mail at jslanker@sniffenlaw.com or mbryant@sniffenlaw.com. ✤

DISCRIMINATION

Employer policies, training key to avoiding anti-Muslim bias claims

As fears of terrorism at home and abroad—and related political rhetoric—dominate headlines, emotions run high. Those sentiments often find their way into the workplace, subjecting certain employees to unlawful discrimination based on religion and national origin. The deadly terrorist attacks in Paris in November and San Bernardino, California, in December are just the latest instances to provoke fear and anger capable of inciting discrimination, harassment, and retaliation at work.

Statistics from the Equal Employment Opportunity Commission (EEOC) show a spike in claims of discrimination in the workplace based on religion and national origin since the September 11, 2001, terrorist attacks. That rise in claims has put the agency on guard, prompting it to take action to prevent discrimination and punish employers that allow it to occur. Therefore, the message is clear: Employers need to take their responsibility to act against unlawful discrimination very seriously.

EEOC action

Employers face liability when they allow unlawful discrimination or fail to address it when it occurs. Religion and national origin are among the characteristics protected under Title VII of the Civil Rights Act of 1964, which applies to employers with 15 or more employees as well as most unions and employment agencies. The EEOC has reported that in the first months after the September 11, 2001, terrorist attacks, it saw a 250 percent increase in the number of religion-based discrimination charges involving Muslims. An EEOC document states that between September 11, 2001, and March 11, 2012, it received 1,040 charges from individuals who are or were perceived to be Muslim, Sikh, Arab, Middle Eastern, or South Asian.

The EEOC document says the number of charges directly related to the 2001 attacks has decreased over the years, but "the Commission continues to see an increase in charges involving religious discrimination against Muslims and alleging national origin discrimination against Muslims or those with a Middle Eastern background." The EEOC document says alleged harassment has included taunts such as "Saddam Hussein," "camel eater," and "terrorist."

Many examples of workplace incidents show up in complaints and lawsuits. In one case filed in federal court in Louisiana, a Muslim employee of a concrete company claimed a member of management called him into his office and forced him to watch a video of a beheading, after which the manager yelled, "These are the

TRAINING CALENDAR

Call customer service at 800-274-6774 or visit us at the websites listed below.

2016 WORKPLACE VIOLENCE PREVENTION SYMPOSIUM: The Latest Insights on How to Minimize Potential Threats and Legal Risks
Orlando, March 10-11

RecruitCon 2016: Tech, Trends, and Tactics for the New Era of Talent Acquisition
http://store.HRhero.com/recruitcon-2016
Las Vegas, May 12-13

THRIVE 2016 Annual Conference: Advancing HR's Strategic Role as Business Partner and Cultural Leader
http://store.HRhero.com/thrive-annual-conference
Las Vegas, May 12-13

WEBINARS & AUDIO SEMINARS
Visit http://store.HRHero.com/events/audio-conferences-webinars for upcoming seminars and registration

3-2 OSHA 300 Recordkeeping-Top 10 OSHA Injury and Illness Recordkeeping Mistakes and How to Ensure Your Recording Strategies are in Full Compliance

3-3 Background Checks: What You Can, Should, and Shouldn't Do

3-3 Data Security for HR: Honey Pots, Spear Phishing, Whale Phishing and More—How to Work Collaboratively with IT to Prevent Hack Attacks

3-4 Handling the Zika Virus: HR and Safety's Compliance Obligations and Practical Strategies for Managing Global Health Emergency's Impact on Your Workplace

3-8 HR Recordkeeping: What's Essential to Keep, and What to Throw Out for Legal Compliance

3-9 How's Your Compliance Health? CFRA and FMLA Self-Audits Check-Ups

3-11 New EEOC Retaliation Enforcement Guidance: Best Practices for Avoiding Your #1 Employee Charge Risk

3-15 HR's Role as a Profit Maker: Why Human Capital is a Driver for Value ✤

Muslims." That incident—in addition to the employer's ineffective actions to prevent and stop harassment—led a court to allow the employee's claim to go to a jury.

The EEOC has posted information outlining employers' responsibilities related to Muslim, Arab, South Asian, and Sikh workers. The question-and-answer document is found at www.eeoc.gov/eeoc/publications/backlash-employer.cfm. The document explains that Title VII prohibits discrimination based on religion, ethnicity, country of origin, race, and color and that "such discrimination is prohibited in any aspect of employment, including recruitment, hiring, promotion, benefits, training, job duties, and termination." Workplace harassment also is prohibited under Title VII.

Inconsistency may give the appearance of discrimination even if no discrimination is intended.

In addition, the document for employers spells out that Title VII prohibits retaliation against individuals who engage in protected activity, which includes filing a charge, testifying, assisting, or participating in any manner in an investigation, or opposing a discriminatory practice. In addition to the information provided for employers, the agency has developed fact sheets on immigrant employee rights (www.eeoc.gov/eeoc/publications/immigrants-facts.cfm) and discrimination based on religion, ethnicity, or country of origin (www.eeoc.gov/laws/types/fs-relig_ethnic.cfm).

What to do

You have a responsibility to prevent and address discrimination and harassment, so it's crucial to have sound antidiscrimination policies and reporting procedures that are well-known to employees. Employees and management in particular also need training on proper workplace behavior.

Employees who suspect they are targets of discrimination or harassment should know how to report the problem and ask for help. In addition to a clear reporting policy, your procedures should include a prompt investigation of the complaint as well as an effective response. Once a report has been made, you need to act quickly to investigate the allegations and take steps to prevent more trouble.

Consistency also is vital to avoiding and solving problems. Workplace rules and documentation of employment actions need to be applied consistently since any inconsistency in practices or documentation may give the appearance of discrimination even if no discrimination is intended. ✤

FLORIDA EMPLOYMENT LAW LETTER (ISSN 1041-3537) is published monthly for $447 per year plus sales tax by **BLR®—Business & Legal Resources,** 100 Winners Circle, Suite 300, P.O. Box 5094, Brentwood, TN 37024-5094.

Editorial inquiries should be directed to G. Thomas Harper at The Law and Mediation Offices of G. Thomas Harper, LLC, 1912 Hamilton Street, Suite 205, Post Office Box 2757, Jacksonville, FL 32203-2757, 904-396-3000. Go to www.EmploymentLawFlorida.com for more information.

FLORIDA EMPLOYMENT LAW LETTER does not attempt to offer solutions to individual problems but rather to provide information about current developments in Florida employment law. Questions about individual problems should be addressed to the employment law attorney of your choice. The Florida Bar does designate attorneys as board certified in labor and employment law.

For questions concerning your subscription or Corporate Multi-User Accounts, contact your customer service representative at 800-274-6774 or custserv@blr.com.

HRhero® a division of BLR BLR®