Fourth Quarter, 1994

LABOR UPDATE

Recent Developments in Labor and Employment Law

COURT STRIKES DOWN NO-SPOUSE RULE

The Illinois Appellate Court recently held that a no-spouse rule created unlawful marital status discrimination against the wife of a school principal. This decision casts doubt on the legality of most no-spouse or anti-nepotism policies instituted by employers.

In *River Bend Community Unit School District No. 2 v. The Illinois Human Rights Commission*, a long time school teacher, Virginia Ray, sued the River Bend school district over a policy it had adopted prohibiting employee transfers to positions where one spouse would be directly supervise the other. In 1984, Virginia requested a transfer to the Fulton Elementary School located in the River Bend school district. However, Ben Ray, Virginia's husband, was the principal of the Fulton Elementary School at that time. The school district denied the request based on its no-spouse rule.

Virginia sued contending that the no-spouse rule constituted illegal discrimination based on marital status. The Court agreed, upholding a decision issued by the Illinois Human Rights Commission. Initially, the Court held that the phrase "marital status" not only protects employees based on whether they are single, married, divorced, or separated, but also on the identity of the employee's spouse. Thus, Virginia's status as the spouse of Ben Ray was sufficient to trigger the protection of the "marital status" definition.

Next, the Court rejected the school district's attempts to establish that the no-spouse rule was essential for the efficient operation of the school. The school district presented expert testimony that spouses working together created disciplinary problems, low morale and conflicts of interests. Nevertheless, the Court concluded that the school district's no-spouse policy was overly broad, since there was no specific showing that all or substantially all spouses could not effectively supervise one another in a school setting. The Court pointed to the fact that Virginia Ray had

shown that she had spent four years under the supervision of her husband in the 1960s with no work related problems arising.

In light of the *River Bend* decision, employers should re-examine their no-spouse or anti-nepotism policies. To pass the high standards pronounced in the *River Bend* decision, an employer must demonstrate that these policies are reasonably related to the essential operation of the job. Also, there must be a factual basis that all or substantially all spouses can not perform the job based on security or other vital concerns of the company. (*River Bend Community Unit School District No. 2 v. The Illinois Human Rights Commission*, 232 Ill. App. 3d 838, 597 N.E.2d 842 (3d Dist. 1992), cert. denied, 147 Ill. 2d 637, 606 N.E.2d 1235 (1992)).

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LOOSE TALK AND WANDERING HAND DO NOT CONSTITUTE INVITATION FOR SEXUAL HARASSMENT COURT HOLDS

Vulgar, "unladylike" behavior by a female tinsmith who was the target of a campaign of sexual harassment did not defeat her Title VII claim, according to the federal appeals court in Chicago. This decision may potentially make it more difficult for employers to defeat sexual harassment claims using the "welcomeness" defense.

The plaintiff was the first woman to work in the tinsmith shop at the company. The men in the shop made derogatory comments of a sexual nature on a daily basis and subjected her to offensive signs, pictures and graffiti. She was also the target of various sex related pranks, such as painting her toolbox pink and cutting out the seat of her overalls. The men would change in and out of their work clothes in front of her, and twice a coworker deliberately exposed himself.

But the plaintiff was no angel either. A female welder, who worked near the tinsmith shop, testified that the plaintiff was a "tramp," because she used the "F word" and told dirty jokes. The welder also testified the plaintiff once placed her hand on the thigh of a young male coworker.

Overruling a lower court's finding that the plaintiff's conduct constituted "welcomeness," the Court ruled that the plaintiff's words and conduct could not be compared to those of the male tinners. The plaintiff was one woman among many men the Court noted, and her use of vulgar language could not be deeply threatening. Likewise, her placing her hand on the thigh of one of her "macho coworkers" could not be considered intimidating or an invitation to the sexual harassment she endured.

The Court also found the employer's response to the plaintiff's complaints of the sexual harassment woefully inadequate. The Court held that the employer was "unprepared to deal with problems of sexual harassment even when those problems were rubbed in its face." Although the woman maintained legitimate active complaints, little was done to improve the situation the Court noted. Meetings were held, but no disciplinary action was taken. At one meeting, management agreed to show a videotape on sexual harassment, but it was never shown. Also, the personnel director acknowledged that he was uncertain as to the handling of the company's sexual

harassment policy and had never read it.

This decision places the burden on employers to establish and implement an effective sexual harassment policy. With courts becoming more reluctant to deem offensive conduct "welcome," the response by employers to sexual harassment complaints becomes vital to defending such claims. (*Carr v. General Motors Corp.*, 65 EPD ¶43,211 (7th Cir. 1994)).

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BARGAINING MORE IMPORTANT THAN BURYING THE DEAD

A federal court has declared unlawful an Illinois law that required unions and cemeteries to agree on a pool of grave diggers to perform interments during labor disputes. The law was initially passed to assure burial within a day or two of death for individuals whose religious beliefs required it. Striking down the law, the court found the law directly intruded into the collective bargaining process, regarding subjects that should best be left to negotiations. (*Cannon v. Edgar*, 128 LC ¶11,177 (7th Cir. 1994)). There was no immediate reaction from labor leaders as to how long they would keep their own Aunt Betsie on ice for the sake of contract negotiations.

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BITS AND PIECES

The Equal Employment Opportunity Commission recently reported that a total of 34,877 charges have been filed alleging violations of the American with Disabilities Act from 1992, when the law went into effect, through the end of September 1994. Approximately, $30.4 million dollars have been paid to workers for employer discrimination according to EEOC statistics. Illinois ranked fourth highest in the number of disability discrimination charges filed at 1,790. The most common disabilities cited were back impairment, neurological impairments followed by emotion/psychiatric disabilities. Charges based on HIV infection made up 2% of all charges filed. The EEOC predicts that disability discrimination charges will make up an even higher percentage of all discrimination charges filed in the years to come.

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The United States has replaced Japan as the world's most competitive economy for the first time since 1985 according to the World Competitiveness Report. The United States obtained the number one ranking by the strength of its entrepreneurship and nearly a decade of economic restructuring the Report concluded. However, the Report cautioned that poor secondary-school education and low savings rates raise the risk of a longer-term decline if not corrected. *Wall Street Journal,* July, 1994.

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American workers could end 1994 with smaller pay increases than last year, when employment costs grew by a modest 3.5%, the United States Department of Labor reported. This year, the government reports that workers' wages, salaries and benefits are projected to increase by just 3.2%. The Labor Department further reported that wage increases, alone, averaged 2.4% annually in major collective bargaining agreements for an estimated 627,000 workers in construction, trucking, clothing and supermarkets. *Wall Street Journal*, July 27, 1994.

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Legislation that would prohibit discrimination against employees or applicants for employment because of past, current or future military obligations has been passed by Congress and now awaits the President's signature. The Uniformed Services Employment and Reemployment Act was approved by both houses of Congress in September 1994. This legislation would also ban retaliation against employees who assert their employment or reemployment rights, as well as individuals who testify or assist in the investigation of such cases, regardless of whether those individuals are military members.

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QUOTABLE

Our people do not want barren theories from their democracy,
Maury Maverick has expressed very quaintly,
but clearly, what they really want when he says:
"We Americans want to talk, pray,
think as we please - *and eat regular*."

(Robert H. Jackson)

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Behind every man who achieves success
Stand a mother, a wife and the IRS.

(Ethel Jacobson)

Since 1984, the LABOR UPDATE has been provided as a service to clients, fellow attorneys and other friends of the Law Offices of Donald F. Peters Jr. Written entirely by this office, it is intended to provide useful information as to the matters covered, but should not be viewed as an exhaustive treatment of the subjects addressed nor as covering all significant developments in labor and employment law. The LABOR UPDATE is not intended to be a substitute for legal advice.

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