PERSONNEL LAW UPDATE

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Supreme Court Decides *Harris v. Forklift Systems*

On November 9, the United States Supreme Court handed down its ruling in the highly publicized case of *Harris v. Forklift Systems, Inc.* The decision came less than four weeks after the justices heard oral arguments in this Title VII sexual harassment suit brought by Teresa Harris against her former employer, Forklift Systems. In her lawsuit, Harris alleged a pattern of rude, demeaning treatment from her boss based upon her gender, which ultimately caused her to quit her job as manager for the truck leasing company.

The Supreme Court took the case to decide whether or not the Sixth Circuit had been correct in requiring Harris to prove serious psychological injury in order to prevail in her suit. The Court rejected this requirement, opting instead for a case by case analysis of what constitutes sexual harassment.

Editor's Note: *A more detailed analysis of this case appears in a feature article on page 3.*

Does Title VII Apply to Your Company Overseas?

The EEOC has issued a 31-page guidance memorandum outlining two issues. The first issue involves the circumstances in which American and American-controlled employers can be held liable for discrimination that occurs abroad. It pertains to Section 109 of the Civil Rights Act of 1991, which governs the application of federal anti-discrimination laws, including Title VII and the ADA.

When assessing whether an employer is American or American-controlled for purposes of applying United States discrimination laws, the EEOC will initially look to a company's place of incorporation. However, it will sometimes use other factors, including the company's principal place of business; the place where primary factories, offices or other facilities are located; the nationality of dominant shareholders; and the nationality and location of management.

The second issue concerns the circumstances in which foreign employers can be held liable for discrimination that occurs outside the United States. The memo states that foreign employers operating abroad may still be liable for discriminatory conduct, if the company is controlled by an American employer. For example, a foreign subsidiary of an American corporation could be subject to U.S. discrimination laws under the new guidelines.

Editor's Note: *For a copy of the 31-page memorandum, contact the Equal Employment Opportunity Commission in Washington, D.C. at (202) 663-4900 or your regional EEOC office.*

January Deadline for Child Support Payments

Beginning January 1, 1994, employer-made wage withholdings will be the primary method for all child support payments, not just for late-paying parents. Exceptions will be made only when couples agree on alternative arrangements. The changes are due to a provision of existing federal law which becomes effective the first of next year.

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Fraternization and Dating Policies: May Employers Regulate Matters of the Heart?

Dating in the workplace has become a reality of the modern world. The increased number of women in the workplace, coupled with the explosion of sexual harassment lawsuits, has placed employers in an awkward position. Implementing employee dating policies is one way employers can protect themselves against sexual harassment suits, and protect the privacy interests of employees.

Dangers of "Unwritten Rules"

Most employers have been reluctant to address the issue of dating in the workplace. Yet, employers who ignore the issue while relying on "unwritten rules" expose themselves to claims of invasion of privacy, discrimination, and infringement of the fundamental right to marry. Also, an employer may be charged with ignoring, or even condoning, inappropriate behavior if no written standards are in place.

Employers who have attempted to regulate dating in the workplace have taken several approaches. Most companies accept relationships between co-employees. For example, Ford Motor Company generally permits dating between co-workers, and will intervene only if the employees engage in an unprofessional manner. IBM requires its employees to inform management if a dating relationship has been formed, and then, if appropriate, will alter the supervisory structure of the employees involved. Many other companies, such as Apple Computer, DuPont, and Anderson & Co., have policies permitting co-employee relationships, but prohibiting dating between supervisors and their subordinates. If an employer does not have any written standards in place regarding interoffice dating, and terminates an employee for engaging in a relationship with a co-worker, the employer may be liable under privacy and discrimination laws, and other, state-specific laws.

The Wal-Mart Case

Earlier this year, New York Attorney General Robert Abrams filed a suit against Wal-Mart Stores, Inc. The suit alleges that Wal-Mart violated a state law which prohibits employers from terminating employees for engaging in "lawful" daily activities outside the workplace. In this case, two Wal-Mart employees who were dating were discharged because, according to a Wal-Mart spokesman, they engaged in "disruptive" behavior, including taking numerous breaks together and exhibiting public displays of affection. The couple contends that they were never informed that there was a no-dating policy in effect, because the policy was not included in their 1991 employee handbook.

Writing a Good Policy

To protect themselves against sexual harassment liability, while still permitting employees' right to privacy, employers should create clear, specific guidelines that do not prohibit all dating between co-workers, but rather, only dating within a supervisor-subordinate relationship. While it is uncertain, in the wake of the Wal-Mart case, how an employer's no-dating policy will withstand discrimination attacks, employers should consider the following guidelines prior to implementing such policies.

First, articulate in writing the dating policy and the ramifications for violations. An employee handbook is an appropriate forum. Second, dating between supervisors and their subordinates may be regulated. For instance, a policy could require the employees to notify the employer of the relationship, and, if feasible, request a voluntary transfer of assignment. If a transfer is not possible, the employer could consider giving an ultimatum: the employees must either terminate the relationship, or one of them must resign. Or, the employer could consider demoting the supervisor to eliminate the supervisor-subordinate relationship. However, employers are cautioned to avoid such ultimatums without first consulting with an attorney who can advise the employer on acceptable interoffice dating policies and practices.

Finally, a dating policy may include guidelines for employees to follow if faced with unwelcome advances by co-workers. Employees should be advised to document harassing incidents and immediately report them to management.

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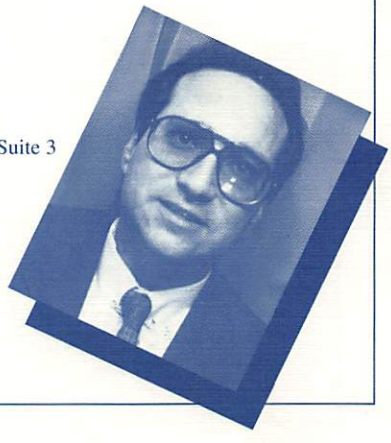

The author would like to credit his associate, Lisa G. Salevitz, as co-author of this article.