



Murphy Austin Adams Schoenfeld LLP

Employment Law Newsletter

November 15, 2004

As a part of an ongoing pursuit to keep its clients well informed, Murphy Austin Adams Schoenfeld LLP is pleased to introduce its employment law newsletter. This newsletter will inform you of the most current legal developments that impact your relationships with your employees. To ensure that the newsletter is as timely and beneficial as possible, we will distribute it by email whenever significant changes in the law occur, or as other information of immediate importance arises. Articles will be compiled by attorneys in our employment law practice group and will be written in a concise manner with the practical needs and time constraints of our clients in mind. We are confident that this newsletter will help you to comply with the ever-changing world of employment law, thereby reducing your potential for litigation in the future.

If you have any questions or comments about any of the items addressed in this newsletter, or about another labor or employment law or issue, please feel free to contact any of our labor and employment lawyers listed (with contact information) at the bottom of this email.

Recent Developments:

New State Law: Two Hours of Required Harassment Training for Supervisors

Under A.B. 1825, scheduled to take effect January 1, 2005, a California employer must now give each supervisor two hours of training regarding unlawful harassment every two years if the employer employs 50 or more employees, including out-of-state employees. The training must be interactive, conducted by qualified individuals, and designed to prevent harassment, discrimination, and retaliation. Employers have all of 2005 to meet this mandate. Supervisors that received training after January 1, 2003 will not have to be trained again and their two year training cycles will begin anew January 1, 2006. As a result, affected employers should begin immediately to plan for the time and expenses that will be necessary to provide this training and establish record keeping systems that will adequately allow the employer to prove that it is meeting this requirement.

Your Employees' Rights at Investigatory and Disciplinary Meetings

Nonunion employees recently lost their right to bring a coworker with them to an investigatory or disciplinary meeting—union employees continue to retain that right. While union employees have had this right since 1975, nonunion employees most recently received this right in 2001 through the *Epilepsy Foundation* case.^{1[1]} However, in June of 2004, the National Labor Relations Board overruled *Epilepsy Foundation* and returned to the rule that only unionized employees have this right.^{2[2]} Thus, an employer may decide whether a nonunion employee will be permitted to bring a coworker with him or her to an investigatory or disciplinary meeting. An employer still may not punish an employee who asks to have a coworker in attendance, regardless of whether the employee is in a union or not.

Liability for a Third Party's Unlawful Harassment

Effective January 2004, the California Fair Employment and Housing Act was amended to hold an employer liable for the harassment of one of its employees by a third party if the employer, upon learning of the unlawful harassment, did not immediately seek to prevent the harassment from occurring.^{3[3]} In recent months, two different courts have directly addressed the issue of whether liability exists for third party (or non-employee) harassment that occurred prior to

January 2004, and they have come to different conclusions on the same issue.^{4[4]} Irrespective of whether the law applies to conduct prior to January 2004, employers now must take steps to ensure that their clients or other third parties are not harassing their employees.

Seminar:

On December 8, 2004, MAAS' labor and employment attorneys will present an employment law and legislative update—a morning seminar highlighting the most pertinent changes in the law affecting employers now and beginning in 2005. The topics include:

Legislative Update: What's New in 2005

- **Wage & Hour: Understanding the New Federal Exemptions.**
- **Wage & Hour: Pay and Leave Deductions for Exempt Employees.**
- **Untrained Supervisors: Your Company's Most Overlooked Risk!**
- **Labor Relations: Current Trends.**
- **Disability Accommodation and ADA Access Problems.**

Wednesday, December 8, 2004

Doubletree Hotel in Sacramento, 2001 Point West Way, Sacramento, CA 95815 [Map and Directions](#)

Continental breakfast begins at 8:00 a.m.

Program concludes at 11:00 a.m.

There is no cost to attend

For reservations or additional information, please contact Donna Kulczyk or visit our website at: www.murphyaustin.com

RSVP deadline is Monday, November 29, 2004

We hope you will attend so that we may better protect and assist you in the upcoming new year!



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You may contact the above attorneys via e-mail by clicking on their name or using the contact information below.

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Please be assured that we make every effort to make certain that the information contained in this article is current at the time the article was prepared. Since laws and legislation are constantly changing, please contact us if you are unsure whether this material is still current. Nothing contained herein is meant to be legal advice. Please contact us to answer any questions you may have.

[1] *Epilepsy Foundation v. N.L.R.B.* (C.A. D.C. 2001) 268 F.3d 1095.

5[2] *IBM v. N.L.R.B.* (N.L.R.B. 2004) 2004 WL 1335742.

6[3] **Government Code §12940(j)(1); amended by Statutes of 2003, chapter 671, section 1, page 4072.**

7[4] *Salazar v. Diversified Paratransit, Inc.* (2d Dist. 2004) 117 Cal.App.4th 318 (holding an employer can be liable for a client's unlawful harassment prior to January 2004); and *Carter v. California Dept. of Veterans Affairs* (4th Dist. 2004) 121 Cal.App.4th 840 (holding that an employer cannot be liable for a client's unlawful harassment prior to January 2004).
