



Employment / ADA Access / Fair Housing Law Alert!

Updates you need to know but in a millisecond...

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IN THIS ISSUE

Employment Law

Changes Coming to Sexual Harassment Training Regulations

Top 10 Human Resource Audit List

A Great Seminar Put on by Corfee Stone

Employee's FEHA & CFRA Claims Dismissed At Trial

Possible Wrongful termination Cure: Swift Reinstatement

ADA Access

Plaintiff's Inability to Locate ADA Compliant Facilities is NOT Sufficient to State Claim Under ADA

When Purchasing a Property You do not Inherit its ADA Violation Prior to Your Ownership

Fair Housing



Employment Law

CHANGES COMING TO MANDATORY SEXUAL HARASSMENT TRAINING REGULATIONS



AB 1825 - The California Fair Employment and Housing Commission released a modified version of its regulations for AB 1825 on August 29, 2006.

AB 1825 requires employers with 50 or more employees to provide mandatory training every two years for their California supervisors on preventing harassment, discrimination and retaliation in the workplace.

The FEHC is proposing to reinstate the "training year" tracking method to determine when a supervisor needs to be retrained.

The "training year" would be refined to give a 6 month grace period, no more than 30 months, from a supervisor's last training.

Also, the FEHC is making the requirements to qualify as an "instructional designer" or "qualified trainer" more strict.

The FEHC is expected to adopt these regulations at their next meeting on November 14, 2006.

TOP 10 HUMAN RESOURCE AUDIT LIST By Catherine M. Corfee, Esq.

1. Do you have all of the Federal & State posters displayed conspicuously? Yes/No
2. Do you have I-9's for every employee? Y/N
3. Do you know how to handle a State Unemployment dispute? Y/N
4. Do you have written job descriptions for every position? Y/N
5. Do you know how to handle a request for an accommodation for someone with a known disability? Y/N
6. Do you know how to handle a sexual harassment claim? Y/N
7. Are all your employees correctly classified for exempt/non exempt status regarding entitlement to overtime? Y/N
8. Do you have a handbook that is legally reviewed on a regular basis? Y/N
9. Do you have an excellent employment application? Y/N
10. Do you have an arbitration agreement? Y/N

**Corfee Stone can help you and your business with the above issues.*

A GREAT SEMINAR PUT ON BY CORFEE
STONE ON OCTOBER 31, 2006 "HR FROM A
PLAINTIFF'S PERSPECTIVE: HOW TO AVOID
PITFALLS"



**Presented by Catherine Corfee, Esq.
and Zachary Best of Corfee Stone &
Associates**

Ms. Catherine Corfee and Mr. Zachary Best put on a very lively interactive 2 hour seminar for the members of the Sacramento Human Resource Association. Attendees at this seminar had the opportunity to gain an insight into the mind of a plaintiff's employment attorney. Corfee Stone took on the role of a plaintiff and educated employers about their clever strategies. Knowing the game plan of the other side helps employers become better prepared to potentially avoid litigation. The attendees learned about topics such as how to avoid litigation, how most employment disputes begin, what plaintiff's attorneys are looking for when building their cases, and how to avoid falling into traps set by plaintiff's attorneys. The role of a human resources professional makes a tempting target for opposing counsel because they are the frontline person who is responsible for making sure the company complies with the law. A Human Resource professional needs every advantage when they find themselves in the unfortunate situations of being a witness in an employment case. This was an excellent opportunity to find out how defend your company's policies and practices.

Corfee Stone Can Make a Similar Presentation to Your Company, Including Other Employment Related Topics. The Price for a Two Hour Seminar is \$1000.00. Other Alternatives and Variations Could Be Made. Call Ms. Corfee for More Information: 916-487-5441

Catherine Corfee is a principal of Corfee Stone & Associates. She has extensive experience in Federal and State court defending employers against wrongful termination cases, employment harassment and discrimination claims, trade secret disputes, and the entire field of employment issues. She provides preventative advice to employers of all sizes. Her emphasis also includes defending business against disabled access lawsuits. Ms. Corfee defends

homeowner's associations, and apartment complexes, etc. regarding housing discrimination claims. Her practice includes representing about three Plaintiffs a year regarding employment related disputes. This provides her with superior insight since she also primarily defends employers. Knowing both angles of employment law distinguishes her from attorneys who solely defend employers or employees.

Zachary Best completed his undergraduate education at U.C. Davis, where he majored in History. Subsequently he graduated from McGeorge School of Law in Sacramento, CA. He has been practicing mainly employment law for 13 years. He began as an associate with Ross and Associates of Oakland, CA. The Ross firm represented plaintiffs in employment cases. Mr. Best then became an associate with the Law Offices of Waukeen McCoy in San Francisco, CA. At the McCoy firm, he was part of the legal team that represented a group of plaintiffs in an employment discrimination case against I.B.C. Corporation (the makers of Wonderbread). That trial resulted in the largest jury verdict ever in a race discrimination case (\$132 million). Mr. Best now works for the firm of Corfee Stone, where he represents employers in employment matters.

**EMPLOYEE'S FAIR EMPLOYMENT AND HOUSING &
CALIFORNIA FAMILY RIGHTS ACT CLAIMS
DISMISSED AT TRIAL**



Barbara Neisendorf held a vice president position at Levi Strauss & Co. During her approximate 2 years of "at-will" employment. Supervisors and subordinates expressed concerned of her work performance.

In August 2002, Neisendorf took 14 weeks of medical leave due to a diagnosed panic disorder. After she was cleared to work again, Neisendorf returned to work and immediately met with her supervisor and a return-to-work specialist to discuss her job performance issues. The next day, Neisendorf was terminated because of her unsatisfactory job performance and her refusal to admit job deficiencies. Neisendorf filed a lawsuit, claiming her termination of employment violated the California Family Rights Act (CFRA) and Fair Employment and Housing Act (FEHA).

Most of her claims were dismissed except for her claims for violation of FEHA for taking medical leave under CFRA, which went to a jury trial.

The jury found in favor of Levi Strauss & Co., concluding that Neisendorf was not terminated in retaliation under the CFRA and she was not a “disabled person” entitled to FEHA’s protection, but the evidence showed and Neisendorf admitted that she was terminated because of unsatisfactory job performance and refusal to admit job deficiencies.

**POSSIBLE WRONGFUL TERMINATION
CURE: SWIFT REINSTATEMENT**



Olga Moreno performed office work at the Anwa Marina Del Ray Resort in Los Angeles County. Moreno was mistakenly fired by the Anwa Hotel and Resort International Inc. while she was on pregnancy disability leave. However, within two weeks of the erroneous termination Anwa offered Moreno reinstatement.

Despite the fact that Anwa had unconditionally reinstated her with full pay, leave time pay, and benefits, Moreno refused to return to work. Moreno claimed that the termination had created undesirable working conditions making her reinstatement impossible.

The Los Angeles County Superior Court granted the motion in favor of the employer to dismiss her case. The court held that the reinstatement had reversed the termination and that Moreno had received all of the leave that the law allowed.

Moreno appealed claiming that since she rejected the offer for reinstatement that it could not cure the wrongful termination. She went on to assert that the alleged wrongful termination deprived her of her disability leave and prevented her from bonding with her newborn child and from recovering from her postpartum depression.

Despite Moreno’s efforts the California 2nd District Court of Appeal sided with the Employer agreeing that the offer of reinstatement cured the wrongful termination and added that Moreno’s refusal to accept that offer was unreasonable. The court relied on the fact that the Anwa offered Moreno reinstatement before she had intended or was able to return for work. As a result, the court decided that Moreno did not suffer any wage or benefit loss and

did not experience any change in her employment state. Lastly, due to Anwa’s immediate reinstatement of Moreno, any possible damages would be confined to the two week period between termination and reinstatement.

ADA ACCESS LAW

**PLAINTIFF’S INABILITY TO LOCATE ADA
COMPLIANT FACILITIES IS NOT SUFFICIENT
TO STATE CLAIM UNDER ADA**



On January 13, 2004 a wheel chair bound man, Tony Harris, alleged that a Costco was in violation of the ADA due to his inability to utilize their facilities. Harris attempted to use the disabled parking spaces provided by Costco but they all were in use. When Harris then attempted to use the general parking spaces he encountered barriers and was unable to find an accessible route to the store. Harris claims that he was forced to dodge cars to get to the entrance of the store.

Harris’ expert found that the Costco had a sufficient number of ADA accessible parking spots and that there were no accessibility problems in the portion of the parking lot reserved for the disabled.

Harris then went on to claim that Costco failed to provide him with detectable warnings and path of travel signs from the general parking area to safely reach the entrance of the store. However, both Harris’ expert and Costco agreed that detectable warnings are used to aid visually impaired individuals to warn them of hazards on a circulation path, and not to aid those with mobility impairment.

Later in his visit Harris used the Costco’s bathroom and stated that when using that bathroom with hit his knee on the toilet paper dispenser because to protruded too far from the wall. When Harris’ expert survey the bathroom he found that while the dispenser in question extended 40 inches from the back wall and the maximum is only 36 inches, there were two dispensers and since the second dispenser is within 36 inches from the back wall there is no ADA violation.

Finally, when Harris finished his visit to Costco

he use the ATM card reader, which Harris claimed was too high and gave him difficulty. However, Harris' expert again found that Costco was not in violation, reader must with below 46 inches from the ground, Costco's reader was only 40 inches high.

After Harris finished shopping he needed to refuel his car. At his deposition Harris said that the gas station was packed and he couldn't tell which pump would accommodate his disability so he left without refueling.

The court decided to side with Costco, stating that the inability to locate disabled parking on one occasion was insufficient to state claim under the ADA. In addition, Costco is not responsible for providing an accessible path or travel for a disabled person from general parking. Finally, since Harris was not visually impaired the court felt that he did not have standing to challenge Costco's lack of detectable warnings. In regards to the gas station incident, the court felt that Harris chose not to refuel due to the crowd and did not encounter any violation of Costco's that would have prevented him from utilizing their facilities. Finally, since the difficulty that Harris had with the restroom and the ATM reader were not due to ADA violations there were no triable issues in regards to them as well. Costco's motion for summary judgment was granted and all of Harris' remaining causes of action were dismissed without prejudice to be re-filed in state court.

WHEN PURCHASING A PROPERTY YOU DO NOT INHERIT ITS ADA VIOLATIONS PRIOR TO YOUR OWNERSHIP



In May of 2002, Jorge Luis Rodriguez, a quadriplegic, stayed at a facility known as Westgate Palace. Rodriguez planned on staying for two nights but ended up only staying for one due to the inconveniences that he suffered when he encountered numerous ADA violations.

The Defendant purchased Westgate Palace in July of 2002, when the previous owner fell into bankruptcy. Upon its purchase the Defendant hired a number of contractors, including an ADA advisor, to renovate the facility. Plaintiff Rodriguez filed this

lawsuit in August of 2002 against the former owners. Upon learning of their bankruptcy and that the Defendant had acquired the property, Rodriguez filed an amended complaint against the Defendant in September of 2002.

The Defendant's architect testified that Westgate Palace was planning on altering the entire facility and creating ADA compliance was an aspect of that renovation. Westgate Palace is in the process of providing 10 handicap-accessible units, which satisfies the ADA guidelines. Rodriguez called on his expert witness, Thomas Rucci, who provided a list of Westgate Palace's violations. However, Rucci's list included criticisms of facilities and features that had not been constructed yet and questioned the ADA compliance of the future accessible units without basis.

Rodriguez then expressed interest to return to Westgate Palace; however, he made the reservations to stay at West gate Palace two days before the trial commenced. Rodriguez was unable to explain why he would make reservations at a location that he knew was not compliant when there were a number a facilities in the area that would be able to accommodate him.

The court was not amused by Rodriguez and his almost 200 previous lawsuits. They could not understand why an individual would be in such a rush to file suit when only injunctive relief is available. The court labeled Rodriguez a professional pawn in an ongoing scheme driven by attorney's fees. They went on to identify voluntary compliance a more rational solution to the ADA lawsuit boom; however, since pre-suit settlements fail to provide counsel with attorney's fees this is not a Plaintiff's favorite option. The court entered judgement against Rodriguez mainly due to the fact that the Defendant was not in ownership of the facility when Rodriguez visited. Rodriguez, therefore, was unable to prove that the Defendant subjected him to any form of discrimination and cannot establish any basis for relief under the ADA.



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