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November 2005
Volume 13, Issue 11

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LEHR MIDDLEBROOKS PRICE & VREELAND, P.C.
LABOR & EMPLOYMENT LAW

Employment Law Bulletin

To Our Clients And Friends:

An employee who was hired but never spent a day at work for the employer was entitled to almost $800,000 in compensatory and punitive damages because of his testimony in an employment lawsuit against his employer. Reust v. Alaska Petroleum Contractors, Inc. (Alaska S. Ct. Oct. 23, 2005). After Reust was hired but before he began working, he was told that the company was terminating him because of his participation in a trial between the company and a former employee. The jury originally awarded Reust $4.3 million in punitive damages, but the trial judge reduced that award to $500,000 under state law. The employer argued that Reust had not been hired since he had not begun working, and that if he had been hired, he was terminable at will. In rejecting that claim, the Court stated "subjecting employers to liability for retaliating against employees who testify in legal proceedings dissuades retaliatory conduct. It also reduces the temptation for employees, fearing adverse responses from their employers, to provide false testimony or disobey a subpoena."

Approximately 30% of all employment claims include a claim of retaliation. It is understandable that an employer would not want an individual whose testimony proved to be harmful to the employer working for it. However, terminating an employee for that reason violates federal employment statutes, public policy, and statutes in several states. Unless an employer can substantiate that it would have terminated the employee anyway, despite the testimony, or that the individual lied under oath, the employer should not terminate. There are other strategies to handle an employee who engages in protected activity but because of such activity the employer has lost trust in the individual.

SUCCESSFUL SURVEILLANCE STOPS SUIT

Suspicious of an employee who was out sporadically on FMLA leave for migraines, Nichols Portland, a Maine manufacturing facility, hired a private investigator to conduct surveillance of the employee during those days he was absent for the FMLA covered migraines. As luck would have it, on those days the individual was videotaped driving, shopping and working out. Predictably, the individual was terminated and, also predictably, the individual claimed that he was terminated in retaliation for using FMLA benefits. The district court granted summary judgment for the employer which was affirmed by the Court of Appeals. Colburn v. Parker Hannifin / Nichols Portland Division, (1st Cir Nov. 18, 2005).

The employee applied for short-term disability benefits due to his migraines and received FMLA approved leave for the migraines. On his application for the short-term disability benefits, he stated that he was unable to perform any activities when he had a migraine. Although he was granted FMLA leave, the employee never complied with the company's request for medical certification (this could have been an independent basis for termination). Furthermore, when the company called the employee at home during his absences, the employee was not there. The next time the employee called in sick due to migraines, a private investigator videotaped him driving to a gym, working out for thirty minutes, driving to a video store, and shopping at three other stores. The next day, the employee was still allegedly sick, but was videotaped remaining ever-vigilant to his thirty minute work-out schedule, renting another video at the video store, visiting two other stores, and stopping by the bank. To top off this rough migraine-filled day, the employee was also videotaped purchasing a six-pack of beer and a bag of pretzels.

In rejecting the retaliation claim, the Court stated that there was no evidence to suggest the reasons for employer's termination were pretextual. The company showed that it had hired private investigators previously and had terminated other employees for serious misconduct, which was the work rule that covered Colburn's termination.

EMPLOYER RISKS WHEN A NON-EMPLOYEE SEXUALLY HARASSES AN EMPLOYEE

The case of Dunn v. Washington County Hospital (7th Cir., Nov. 17, 2005) involved a sexual harassment claim where a doctor was alleged to have taken a "turn for the nurse." Dunn was a registered nurse at a 59 bed public hospital. Thomas Coy, a surgeon, was hired as an independent contractor to lead the hospital's Obstetrics and Emergency Care Departments. Six different nurses alleged that Coy sexually harassed them and, after he became aware of their statements, he then pressured them to revise or retract their statements. One nurse alleged that Coy said "if you're not nice to me, there is no telling what could happen." Dunn and several other of the nurses resigned. Dunn sued the hospital and Coy. The district court granted summary judgment for the hospital, which had argued that since Coy was not its employee, it could not be responsible for Coy's behavior toward the nurses. In reversing this decision, the Court of Appeals stated that **under Title VII, "an employer is responsible for every 'tangible employment action' (hiring, firing, promotion or its absence, wage setting, and the like) plus any other discriminatory term or condition of employment that the employer fails to take reasonable care to prevent or redress…it makes no difference whether the person whose acts are complained of is an employee, an independent contractor, or for that matter, a customer."**

Employer workplace harassment policies need to be broad enough to address the behavior of non-employees, such as contractors, vendors, customers, or other visitors to the premises. In the Dunn case, the employer's problem was not its policy, but its follow through once the behavior had been reported. No doubt the hospital was faced with a dilemma between risking an employment lawsuit or losing the services of a valued physician. However, the employer's decision to try to smooth things over and not deal with the physician's behavior will most likely cost the hospital a significant amount of money and damage its reputation. When the source of the inappropriate behavior is a significant third party, such as an important customer, a key physician, or an important referral source, we have found that often when an individual from the organization with a high level of responsibility consults with the third party about his or her behavior, the behavior stops. If after such a consultation the behavior continues, then the employer needs to take more significant steps which may include terminating the relationship. The customer is not always right, and may not always be the customer.

EEO-1 REPORT CHANGES LIKELY FOR 2007

Private sector employers with 100 or more employees and certain federal contractors with 50 or more employees are required annually to complete an EEO-1 report which may be reviewed by the EEOC, OFCCP and other federal and state agencies. Approximately 45,000 private sector employers complete this report each year. The report requires a breakdown of the workforce by job category, race, ethnicity, and gender.

The EEOC has proposed changing the form for the first time in forty years. The changes include increasing the number of job categories and also categories for racial and ethnic information. Under the new report, the category of officials and managers will be divided into two subgroups, one being executive/senior level officials and managers and the other being first/mid-level officials and managers. Changes to the race and ethnic categories include adding a new category "two or more races, not Hispanic or Latino," and "Native Hawaiian or other Pacific Islander, not Hispanic or Latino." The proposed changes are under review by the Office of Management and Budget. The category "Asian" will be distinguished from "Pacific Islander." Hispanics will not be identified by a separate category; the category instead of "Hispanic" will now be "Hispanic or Latino."

Employers should give careful thought to how their current or future EEO-1 is completed. The EEOC may file a charge, known as a Commissioner's Charge, based on this information.

OSHA TIPS: OSHA AND TEMPORARY EMPLOYEES

This article was prepared by John E. Hall, OSHA Consultant for the law firm of Lehr Middlebrooks Price & Vreeland, P.C. Prior to working with the firm, Mr. Hall was the Area Director, Occupational Safety and Health Administration and worked for 29 years with the Occupational Safety and Health Administration in training and compliance programs, investigations, enforcement actions and setting the agency's priorities. Mr. Hall can be reached at (205) 226-7129.

A penalty of $113,000 was proposed by OSHA when about 50 temporary employees were found welding in an area where there was a likely exposure to significant lead levels. An agency press release stated, "this employer failed to provide respirator fit testing for temporary employees and allowed them to work in a lead contaminated environment for about two weeks."

In another case, an employee of a temporary labor provider was working as a helper on a rear-loading refuse collection truck. After being on the job for only 30 minutes or so, he fell backwards from the truck and was killed. Following their investigation, OSHA cited the client employer for failing to provide temporary

employees with protective equipment, such as high visibility vests, and for failing to train them in safe work procedures. The total proposed penalty in the case was $84,500.

OSHA violations involving temporary or leased employees, such as the above, often arise from failures to train or to provide appropriate protective equipment. Apparently haste to get short-term employees productively engaged, and a reluctance to expend valuable time on training them, may lead to a willingness to risk injuries and the consequences of non-compliance. Employers should be aware that even for a very brief job, an employee should be provided the required instruction, training and equipment before beginning work. For example OSHA construction standard 1910.21(b) includes a number of requirements for employees to be "instructed."

Is the lessor-employer or the client-employer to whom he is assigned to perform a job responsible for the safety of the employee? Depending upon the specific issues and circumstances involved, the labor supply agency, the client-employer, or both may be accountable and cited for violations. OSHA has interpretive letters posted on its website that may assist in understanding their enforcement position. The labor supply agency, since it has a continuing relationship with the employee, must assume some record-keeping and perhaps generic training responsibilities. This employer would need to maintain medical monitoring and exposure records created on agency employees. The client-employer who creates and controls the work environment will have primary responsibility for exposures to workplace hazards, site-specific training and the use of protective gear. It is this employer who can ensure that machinery is guarded, monitoring is performed to determine whether employees are being overexposed to contaminants, and the like.

OSHA points out in its interpretive documents that the client-employer may choose to specify requirements for personnel supplied them. This might include proof of training or reporting with required personal protective equipment. Labor suppliers and client-employers should discuss and understand their respective responsibilities so that all OSHA requirements will be met.

A recordable injury or illness to a temporary worker should be entered on the client-employer's OSHA 300 log if they provide the day-to-day supervision of the worker. The temporary service should not record the case. OSHA regulation 1904.31 suggests that client-employers and labor supply services coordinate their record-keeping to ensure that a case is not recorded twice.

WAGE HOUR TIPS: CURRENT WAGE HOUR HIGHLIGHTS

This article was prepared by Lyndel L. Erwin, Wage and Hour Consultant for the law firm of Lehr Middlebrooks Price & Vreeland, P.C. Mr. Erwin can be reached at (205) 323- 9272. Prior to working with Lehr Middlebrooks Price & Vreeland, P.C., Mr. Erwin was the Area Director for Alabama and Mississippi for the U. S. Department of Labor, Wage and Hour Division, and worked for 36 years with the Wage and Hour Division on enforcement issues concerning the Fair Labor Standards Act, Service Contract Act, Davis Bacon Act, Family and Medical Leave Act and Walsh-Healey Act.

Wal-Mart continues to be very much in the spotlight regarding its pay practices and treatment of its employees. In January, Wal-Mart negotiated a settlement of some child labor issues with DOL and obtained an agreement from DOL to give them 15-days notice prior to beginning an investigation of one of their stores. The DOL's Office of Inspector General has investigated the settlement and issued a very critical report indicating that Wal-Mart attorneys were allowed to author the settlement documents. In a separate matter, a Missouri court has certified a large "class" of employees in a suit dealing with Wal-Mart's failure to pay certain employees for all hours worked. The class is estimated to include as many as 200,000 employees. This past week, Federal

Immigration Officials raided a Wal-Mart Construction site and found 150 undocumented workers. While a contractor on the project employed these workers, the action still created more unfavorable publicity for the company.

On November 8, the U. S. Supreme Court issued an opinion in two FLSA cases (the first cases heard by the current session of the court) regarding the definition of hours worked. The issue involved time spent by an employee, at the employer's business, putting on protective clothing and walking from the locker room to the workstation. The court found that this activity was an integral part of the employee's workday and consequently should paid time. While the amount of time involved for any employee is small, the fact that employers will have to compensate for this time in the future could cause a significant impact on overall employment costs.

Litigation is still very prevalent under the Fair Labor Standards Act (FLSA). There continues to be more "collective action" lawsuits brought under this statute than under any other employment-related statute. The area where most of the activity is taking place is on behalf of employees to whom employers have failed to pay overtime when the employees worked more than 40 hours in a workweek.

Even though the new regulations, effective August 2004, attempt to clarify the requirements that must be met for an employee to be considered exempt, it appears that many employees that are presently classified as exempt do not actually satisfy the requirements to be exempt. Consequently, I believe that many firms may have some potential exposure relating to salaried employees. Especially in the area of assistant managers in retail and service establishments. Numerous employers still have the misconception that by paying an employee a salary the employee does not have to be paid overtime. Unless an employee is specifically exempt from the overtime provisions of the statue, the employee must be paid over time when he works more than 40 hours during a week. One method that an employer can use to pay employees on a salary basis and still comply with the act is to use the "fixed salary for fluctuating workweek" pay plan that is provided for in the regulations.

Quite often an employee, employed on a salary basis, may have hours of work, which fluctuate from week to week. The salary may be paid pursuant to an understanding with the employer that he or she will receive such fixed amount as straight time pay for whatever hours he works in a workweek even when hours worked are less than forty.

Where there is a clear mutual understanding of the parties that the fixed salary is compensation for all hours worked each workweek, whatever their number, such a salary arrangement is permitted by the Act if:

- The amount of the salary is sufficient to provide compensation to the employee at a rate not less than the applicable minimum wage rate for every hour worked and

- The employee receives extra compensation, in addition to the fixed salary, for all overtime hours worked, at a rate not less than one-half his regular rate of pay.

Since the salary is intended to compensate the employee at straight time rates for whatever hours are worked in the workweek, the regular rate of the employee will vary from week to week. The regular rate is determined by dividing the total number of hours worked in the workweek into the amount of the salary to obtain the applicable hourly rate for the week. The overtime is then computed by paying one-half the applicable hourly rate for each hour of overtime worked. **Payment for overtime hours at one-half such rate in addition to the salary**

satisfies the overtime pay requirement because such hours have already been compensated at the straight time regular rate, under the salary arrangement. Although the regulations do not require that the plan be presented in writing to the employee, it must be clearly conveyed to the employee. One way to do this would be by giving the employee a copy of the pertinent section of the overtime regulations.

For example, for an employee whose salary is $350 a week, and who during the course of 4 weeks works 40, 44, 50, and 70 hours respectively, his regular hourly rate of pay in each of these weeks is approximately $8.75, $7.95, $7.00 and $5.00, respectively. Since the employee has already received straight-time compensation on a salary basis for all hours worked, only additional half-time pay is due for the 44 and 50-hour weeks with no overtime due in the 40-hour week. For the 44-hour week the employee is due $365.90 ($350 plus 4 hours at $3.98), and for the 50-hour week he is due $385.00 ($350 plus 10 hours at $3.50).

However, in the 70-hour week the salary ($350 ÷70 = $5.00) fails to yield the employee the minimum wage. Thus, the employee must be brought up to the minimum wage and paid time and one-half the minimum wage for all overtime hours worked. Therefore, he is entitled to $ 437.75 (40 X $5.15 = $ 206.00 + 30 X $5.15 x 1 ½ = $231.75).

In using this pay plan, the employer must remember two specific problems that can arise which can invalidate the plan and thereby require the employee to be paid time and one-half for all overtime hours:

- The salary must always be great enough so that the employee will always earn at least the minimum wage for all hours worked during a workweek.
- **If the employee works any portion of the workweek, he must receive his full salary no matter how few or how many hours he works during the workweek**. For example, if an employee who has exhausted his sick leave bank works on the first day of the workweek, but is out ill for the remainder of the week, he is still entitled to his full salary for the week.

While most employers would prefer not to have to pay salaried employees any additional money when they work overtime, this pay plan provides a method that complies with the FLSA without incurring such a large cost. If I can be of assistance in the reviewing of pay systems or implementing of new pay plans, please do not hesitate to contact me.

EEO TIPS: IS YOUR FIRM BEING BLIND TO VISUAL IMPAIRMENTS?

This article was prepared by Jerome C. Rose, EEO Consultant for the Law Firm of LEHR, MIDDLEBROOKS, PRICE & VREELAND, P.C. Prior to his association with the firm, Mr. Rose served for over 22 years as the Regional Attorney for the Birmingham District Office of the U. S. Equal Employment Opportunity Commission (EEOC). As Regional Attorney Mr. Rose was responsible for all litigation by the EEOC in the State of Alabama and Mississippi. Mr. Rose can be reached at (205) 323-9267.

DON'T MAKE AN $8 MILLION MISTAKE!

Last May, in the case of EEOC v. EchoStar Communications Corp. (D. Colo. 2005) a 12-person jury awarded $2,000 in back pay, $5,000 in compensatory damages, and $8 million in punitive damages to the plaintiff, Dale Alton, who was blind but otherwise well qualified to serve as a Customer Service Representative in EchoStar's facility located in Englewood, Colorado. The EEOC and Alton alleged that EchoStar had violated the Americans With Disabilities Act by refusing to provide reasonable accommodations at several stages in the hiring process which would have enabled Alton to demonstrate his skills and perform the

duties of the position for which he applied. According to the EEOC, EchoStar denied an application to Alton until after he filed a charge with the EEOC and then failed to accommodate him during the application process by using inappropriate testing devices. Later, the Company failed to accommodate him in performing the job, itself, by refusing to install certain adaptive software for his computer, the cost of which would not have worked an undue hardship on the Company.

At trial the EEOC presented evidence to show that Alton applied for a Customer Service Representative job at EchoStar, and that prior to applying he had completed certain specialized training for such a position including intensive training on a computer program called JAWS (Job Access With Speech) which translates text into speech. By using a split headset in which a blind person hears the JAWS voice in one ear, and the customer conversation in the other ear, the blind person can process written and spoken language at the rate of 400 to 700 words per minute, which according to some, is faster than many sighted persons can read. At trial the EEOC produced an expert to demonstrate how the JAWS computer program works and how easily it could have been utilized by Alton in the Customer Service position at EchoStar. In its defense, EchoStar contended that the JAWS program would not have worked because of the "complexity of its software environment." However, contrary evidence was presented by the EEOC which showed that a number of similar employers had installed the JAWS program for customer service representatives with great success.

Apparently, EchoStar used some faulty application and hiring procedures and followed some bad advice on how to accommodate persons with visual impairments resulting in the outlandish verdict indicated above. At this time, it is not clear whether EchoStar's appeal of the verdict has been successful, but the point is that such urgent legal measures probably could have been avoided by a more enlightened approach in handling applicants and/or employees with visual impairments.

Obviously this is an extreme case, but it could happen to your firm on a lesser scale if you ignore modern computer technology and other mechanical advancements which make it possible to provide reasonable, cost efficient accommodations to applicants and employees with visual impairments. Incidentally, according to the American Foundation for the Blind (AFB), there are currently approximately 10 million people of working age in the U. S. who are blind or visually impaired. Also, according to the National Eye Institute, it is expected that the number of persons with visual impairments will increase substantially over the next two decades. Thus, the chances are good that your firm will encounter an applicant or have an employee with some kind of visual impairment.

Here are a few issues about this disability which could have a profound impact on your firm:

1. What is the definition of a visual impairment? According to the Center for Disease Control (CDC), a person is visually impaired if his or her eyesight cannot be corrected to a "normal level," which generally is 20/20 (to 20/50 by some) with a visual field of approximately 180 degrees. There are varying degrees of vision impairments and not all vision impairments constitute a "disability" within the meaning of the ADA. Blindness is usually described as a visual acuity of 20/400 or more even with the best possible correction by glasses or other aids and a visual field of 10 degrees or less. The term "legally blind" usually means a visual acuity of 20/200 or worse and a visual field of 20 degrees or less which cannot be corrected by glasses or other visual aids.

According to the Center for Disease Control, some persons with the same visual acuity see better than others. Therefore it is extremely important that, in determining whether an applicant or employee has a visual impairment,

an employer make a case-by-case assessment. Remember that at the pre-offer stage of employment, an employer cannot, except under certain limited circumstances, question an applicant about his/her disability.

Depending upon the job in question, including the skills required, persons with vision impairments can perform numerous jobs very effectively. Thus, it would be unwise to automatically exclude such persons from certain jobs or positions (e.g. factory, machinery and manufacturing positions) based upon generalizations and false assumptions about the cost of accommodations and/or safety considerations whenever the numbers coming from a eye test suggest some possible visual impairment. This is not to minimize potential liability or safety concerns where there is a significant risk of accident or injuries. However, employers need to make a fair, objective assessment of the individual applicant or employee's abilities to do the job, with or without some reasonable accommodation, before closing the door on the possibility of employment.

2. When is a visual impairment covered by the ADA? Not every person with a vision impairment is necessarily covered by the ADA's definition of a person with a disability. Whether the person is covered depends on a number of factors that must be evaluated on a case-by-case basis. In many instances, a person's vision impairment may have little or nothing to do with his or her ability to perform all of the essential functions of a given job. Under the ADA a person with a vision impairment has a "disability" within the meaning of the act if:

1. *the impairment substantially limits a major life activity* (e.g. the ability to see things that an average person can see with no difficulty; or walk or transport himself from place to place);
2. *the person "has a record" of being substantially limited* in a major life activity because of the impairment; or
3. *the person is "regarded as" or treated by an employer as having an impairment which substantially limits his or her ability to work in certain jobs*.

Thus, to qualify for coverage under the ADA, a visual impairment must meet the same requirements as for any other disability. However, in the context of visual impairments the requirements of "*having a record of*" and "*being regarded as*" are used less frequently by charging parties seeking to establish a disability than the primary claim of being substantially limited in the major life activity of seeing things as others see them.

> **TIP:** Employers may set "Qualification Standards" which include a certain visual acuity even if they tend to screen out or deny a job or benefit to an individual with a visual impairment **if** the standards are job related and consistent with business necessity and cannot be accomplished by the individual with reasonable accommodations. Employers may include as a Qualification Standard that the individual shall not pose a direct threat to the health or safety of himself or other individuals in the work place. (A direct threat has been defined by the EEOC as "a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation".)

In determining whether an individual's visual impairment qualifies him or her for coverage under the ADA, an employer can take into account any mitigating measures available or used by the individual such as glasses, artificial aids, medications, or other devices including compensatory actions by the person's own body, whether conscious of them or not.

Compensatory adjustments by one's body may include, for example, an improved ability to hear, an improved ability to turn one's neck quickly from side to side to compensate for

monocular vision, and an improved sensitivity to light and shadow. However, these bodily compensatory adjustments do not usually constitute mitigating measures that would disqualify an individual from claiming the underlying visual impairment as a disability.

3. At what point can Medical inquiries be made about visual impairments?

During the Pre-offer Stage? During the application process and/or before an offer is made, if it is obvious that the applicant may have a disability, an employer can ask an applicant whether an accommodation will be needed to complete the application process. Also, if the applicant requests an accommodation, then the employer may inquire as to the extent and/or type of accommodation that is needed. To be safe, an employer may ask all applicants if they will need an accommodation by including the question on the application itself. However, an employer can ask whether the applicant can meet the requirements of the job such as reading files, numbers, or instructions and may give a non-medical, job-related test to determine the applicant's ability to do so.

After an offer is made? As is the case with all disabilities, an employer can require a medical examination (if it is required of all persons in that job), and can give a vision test and ask about any apparent visual impairments resulting from the test. Remember that some individuals see better than others with the same visual acuity. An employer cannot withdraw an offer from a person whose visual impairment is a disability within the meaning of the ADA unless it can be shown that the individual could not perform the essential functions of the job with or without reasonable accommodations.

After the employee has been hired and is performing on the job? Visual impairments can occur at any time for many reasons, including eye injuries or the residual effect of disease after an employee has been on the job. If the employee's visual impairment is not obvious, but his or her job performance has declined markedly, and if, because of the job duties, the employer has reason to believe that the employee is having vision problems, the employer may ask for medical information or require the employee to take a vision test. Usually, under these circumstances, once the decline in performance is called to the employee's attention, the employee will ask for an accommodation which opens the door for the employer to make further inquiries of a medical nature.

In this column next month we will conclude our discussion of this topic by addressing what employers should know about reasonable accommodations for applicants and employees with visual impairments, including the matter of accommodations related to the "benefits and privileges" of employment. In the meantime if you have any questions, please feel free to contact me at (205) 323-9267.

DID YOU KNOW . . .

…that Delphi has proposed cutting its UAW represented workforce by over two-thirds during the next three years? The total UAW represented workforce would decline from 34,000 to 10,000. Delphi also proposed cutting wage rates by 60%, so that the base rate would become $9.50 per hour. Delphi is attempting to reduce its average hourly wage and benefits cost to $21, which it says is necessary to meet its competitors' average hourly pay and benefits rate of $17 to $22.

…that according to a survey of over 2,500 respondents, 60% of employees either feel trapped within their job or plan to leave it within the next two years? The survey was conducted by Walker Information. Only one-third of those who responded are "loyal" to their employers and only four out of ten who responded said their companies treat them as

the company's most important asset. Interestingly, 75% of those surveyed said they are satisfied with their work and their employer, yet only 40% considered themselves loyal. The survey also concluded that there is a close correlation between a high level of employee loyalty and the employees' belief that their employers are highly ethical.

…that the AFL-CIO launched a website with information covering over 60,000 US employers? The website is called Jobtracker (www.workingamerica.org/jobtracker/). The information that the AFL-CIO collected covers executive pay, OSHA violations, labor violations, Warn Act violations, and trade adjustment assistance violations. According to the AFL-CIO, "this is the only place you can go for information on companies and what they're doing behind the curtain." The AFL-CIO is constantly updating this information.

…that the Seafarers International Union agreed to pay $625,000 to settle an age discrimination claim filed by the EEOC? EEOC v. Paul Hall Center, (D.MD. Nov. 14, 2005). The EEOC alleged that the union refused to admit individuals to its apprenticeship program if they were 40 years old or older. The union freely admitted that it told those applicants that the were "too old." The union has since lifted that restriction, and stated that it settled the claim to "avoid mounting litigation costs," but that it "never admitted liability."

…that on November 14, 2005, the Justice Department charged a former UFCW official with embezzling over $110,000? According to the allegation, Carol McCormack was an office manager and personnel director for UFCW Local 100-A. She is alleged to have taken over $110,000 from the union's health and welfare fund over a four year period, beginning in September 1997.

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