

IN BRIEF

The newsletter of
Feldman, Franden, Woodard, Farris & Boudreaux

December 15, 2003

Tulsa, Oklahoma



Loaded With News

OKLAHOMA ALLOWS DEPRECIATION

DEPRECIATION OF REPAIRED AUTOMOBILE IS RECOVERABLE. In *Brennen v. Aston*, 2003 OK 91, the Oklahoma Supreme Court ruled that post-repair depreciation is recoverable. Brennen had his car repaired and claimed not only the cost of repairs but the diminished value of his car since it had been in an accident. The Supreme Court held that if, after repairs, the car was still worth less than it would have been before the accident, the injured party is entitled to the diminished value.

BAD FAITH PREEMPTED BY ERISA. In *Hollaway v. Unum Life Insurance Co.*, 2003 OK 90, the Oklahoma Supreme Court answered a certified question of law to the effect that Oklahoma's bad faith law does not "regulate insurance." The issue was raised with regard to ERISA preemption, and the effect of the opinion is to preempt bad faith claims in ERISA actions. An ERISA action will foreclose an action for bad faith.

WITNESS FEES. In *Heffron v. District Court*, 2003 OK 75, the Court ruled that fact witnesses, such as city fire department employees who have not been retained as ex-

perts, may be deposed on factual issues and paid only the regular witness rate of \$10 per day. The Court noted that in order for the insurance investigators to be entitled to expert fees, their investigation must have been made in anticipation of litigation. Since the trial court did not analyze whether the witnesses were factual witnesses or experts who had acquired or developed facts or opinions in anticipation of litigation or for trial or had been retained specially for trial purposes, the case was remanded to the trial court.

DEAD PEOPLE CAN'T DIVORCE The Oklahoma Court of Civil Appeals has decided that deceased persons may not get a divorce. Apparently the death of one of the parties caused the trial court to lose jurisdiction over enforcement of its orders. *Whitmire v. Whitmire*, 2003 OK CIV APP 87.

OKLA. CONSUMER PROTECTION ACT. Plaintiffs who failed to obtain a monetary award of damages under the Consumer Protection Act were not entitled to an award of attorney fees. *Tibbets v. Sight 'n Sound Appliance Centers, Inc.*, 2003 OK 72.

WE ARE PROUD OF ...

...our lawyers for their recent accomplishments

Joe Farris and Jason Goodnight won summary judgment in favor of a national mortgage company sued for negligence and fraud.

Paula Quillin obtained a favorable settlement of an employment discrimination lawsuit against a major company.

Joe Farris and Jason Goodnight obtained a protective order preventing the plaintiff from taking our client's deposition.

Paula Quillin won an appeal to the Oklahoma Employment Security Commission by a local company.

Paul Boudreaux and Jody Nathan obtained vacation of a partial dismissal of their clients' case. The dismissal occurred before they were involved in the case.

John Woodard and Jody Nathan resolved a number of disputes arising out of the single motor vehicle accident which had been pending for a number of years.

John Woodard, Paul Boudreaux and Jody Nathan obtained dismissal of a case on jurisdictional grounds.

Paula Quillin successfully negotiated the settlement of a Magnuson-Moss and warranty claim against a manufacturer.

Jason Goodnight obtained dismissal of a libel suit against a testing laboratory.

Jody Nathan and Sid Martin obtained remand of cases improperly removed from state court.

Paul Boudreaux and Sid Martin won a significant discovery motion in a copyright infringement suit.

Joe Farris and Paula Quillin won the appeal of a suit seeking enforcement against former employees of an unenforceable noncompete agreement.

Thayla Bohn filed a motion for summary judgment in a premises liability suit which then settled for nuisance value.

Jason Goodnight won a n important discovery battle allowing our client access to financial records of our opponent.

Paula Quillin obtained dismissal of a tort suit against a trucking company.

Santa Claus Under Fire: True Court Cases



David Lynn Porter petitioned the Court to change his name to "Santa Claus." After a hearing, the trial court denied the petition, finding that permitting Porter to change his

name to Santa Claus "would likely create confusion, misunderstanding, . . . allow for substantial mischief," and might cause a "substantial chilling effect for a person or entity otherwise entitled to exercise their access to the courts," who would be faced with the prospect of suing Santa Claus. Porter asked the court to reconsider or, alternatively, to permit him to change his name to "Kris Kringle." The judge refused to change his mind. Porter appealed.

The appellate court reversed for several reasons, one of which is that "Porter already tells others that he is Santa Claus. Allowing him to legally change his name to reflect his practice of doing so is more likely to avoid greater confusion than to create it by making Porter legally responsible for his actions in the name Santa Claus."

In re Porter, 2001 UT 70, 31 P.3d 519 (2001)

The court in Ohio, confronted with the same issue, reached a different decision. Robert William Handley filed an application with the court to change his name to Santa Robert Claus. In his application, he stated that children have called him "Santa Bob" year round and that he lives his life for the children. "The petitioner is a rotund gentleman with a full white beard and wears wire glasses, which he says attributes to people commenting on his resemblance of Santa Claus." Handley "has been acting the role of Santa Claus for over forty years, initially playing the role in a school play at age four-

teen. The petitioner receives gratuity for his portrayal of Santa Claus at various events, but it does not cover his expenses incurred. The petitioner stated in his application, "I don't want people to say you look like Santa, I want to be Santa."

The Court noted that "The history of Santa Claus, the North Pole, the elves, Mrs. Claus, reindeer-- is a treasure that society passes on from generation to generation, and the petitioner seeks to take not only the name of Santa Claus, but also to take on the identity of Santa Claus. Although thousands of people every year do take on the identity of Santa Claus around Christmas, the court believes it would be very misleading to the children in the community, particularly the children in the area that the petitioner lives, to approve the applicant's name change petition."

The application was denied.

In re Name Change of Handley, 107 Ohio Misc. 2d 24; 736 N.E.2d 125.

On the date in question, Santa was operating a motor vehicle that was involved in a minor fender bender. Following the accident for which Santa paid cash money on the spot to the individual whose car he had hit, Santa displayed his Ohio Identification Card to Warren patrolman Eric Merkel, identifying himself as "Santa Clause." The State charged Santa with displaying a fictitious identification card. At a subsequent hearing, Santa produced a "Certificate of Birth" for one Santa Clause born at the North Pole on December 25, 383 A.D. Santa's Ohio identification cards indicated his residence at 1 Noel Drive, North Pole USA. Also admitted into evidence were copies of checks from a bank account held in the name of Santa Claus and Mrs. Santa Claus. The court held that there was no fraudulent purpose in the accused's use of the name, and no violation of the law had occurred.

Paul Boudreaux spoke at the Tulsa Trial Lawyers breakfast meeting, and will speak at the Oklahoma Trial Lawyers Association meeting in December.

Paul Prather, Jason Goodnight, and Curtis Roberts represented the firm in the Tulsa Run. Jason let it be known that he beat both Paul and Curtis.

Paula Quillin spoke at an employment law seminar concerning employment law and employee privacy rights.

John Woodard attended the DRI Insurance & Coverage Symposium.

Joe Farris is Chair of the Transportation Section of ALFA (American Law Firm Association) this year. **Bob Franden** is finishing up his year as Chairman of ALFA.

Curtis Roberts passed the Oklahoma Bar exam and has been admitted to the bar and to all Oklahoma federal district



courts. In the photo, he is being admitted to the United States District Court for the Northern District of Oklahoma.

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U.S. SUPREME COURT TO DECIDE EMPLOYMENT ISSUES THIS TERM

By
Paula J. Quillin, Attorney

The U.S. Supreme Court will review several cases this term involving employment law, including *General Dynamics Land Systems v. Cline* and *Jones v. R.R. Donnelley & Sons Co.*

The *General Dynamics* appeal involves the question of whether the Age Discrimination in Employment Act prohibits “reverse discrimination.” That means discriminating against relatively younger employees. The statute proscribes employers from discriminating “against any individual . . . because of such individual’s age.” The Sixth Circuit Court of Appeals, applying a plain language approach, ruled that this language encompasses reverse discrimination. Nearly every other court has held that it does not. The Supreme Court opinion should resolve this conflict among the various federal appellate courts confronted with the issue.

The issue in *Jones* is more technical but it is still important. The question is which law, federal or state, will determine how long plaintiffs have to sue for damages under the Civil Rights Act. In 1990, Congress passed a federal, four-year statute of limitations to govern all “civil action[s] arising under an Act of Congress enacted after the date of the enactment of this section.” The Civil Rights Act of 1991 would seem to fall within the scope of this provision, but because it amended the existing Civil Rights Act, some federal courts have held that an action under the 1991 Act should be treated as arising under the original act, enacted long before 1990. In their view, state limitations period still govern.

The issue of when a claim becomes time-barred is important because after a certain interval, a disgruntled former employee can no longer sue for alleged discriminatory conduct.

SEASON’S GREETINGS

The partners met and have finally approved this year’s holiday greeting for the newsletter. I am supposed to extend our apologies in advance. — Editor

Please accept with no obligation, implied or implicit my best wishes for an environmentally conscious, socially responsible, low stress, non-addictive, gender neutral, celebration of the winter solstice holiday (tm), practiced within the most enjoyable traditions of the religious persuasion of your choice, or secular practices of your choice, with respect for the religious/secular persuasions and/or traditions of others, or their choice not to practice religious or secular traditions at all . . . and a fiscally successful, personally fulfilling, and medically uncomplicated recognition of the onset of the generally accepted calendar year 1999, but not without due respect for the calendars of choice of other cultures whose contributions to society have helped make America great, (not to imply that America is necessarily greater than any other country or is the only "AMERICA" in the western hemisphere), and without regard to the race, creed, color, age, physical ability, religious faith, choice of computer platform, or sexual orientation of the wishee. By accepting this greeting, you are accepting these terms: This greeting is subject to clarification or withdrawal. It is freely transferable with no alteration to the original greeting. It implies no promise by the wisher to actually implement any of the wishes for her/himself or others, and is void where prohibited by law, and is revocable at the sole discretion of the wisher.

This wish is warranted to perform as expected within the usual application of good tidings for a period of one year, or until the issuance of a subsequent holiday greeting, whichever comes first, and warranty is limited to replacement of this wish or issuance of a new wish at the sole discretion of the wisher.



A FEW SHORT JOKES

Aaron was laying down carpet in some woman's home. As he was finishing, he got a craving for a cigarette. Aaron looked around and discovered that his cigarettes were missing. He did, however, notice a bump in the carpet, and figured that he had laid carpet over the pack without noticing it there. Aaron decided rather than to take up the carpet, he would get a hammer and pound it into the ground so no one would know.

When he finished that, the owner of the house walked into the room and commented on what a nice job he had done.

"Aaron, The carpet looks wonderful!" she exclaimed. "Here are your cigarettes; I found them in the kitchen. Oh yes, and by the way, have you seen my gerbil?"

A young lawyer had just started his own firm. He had just rented a beautiful office and had it furnished with antiques.

He saw a man come into the outer office. Wishing to appear the hot shot, the lawyer picked up the phone and started to pretend he had a big deal working. He threw huge figures around and made giant commitments.

Finally he hung up and asked the visitor, "Can I help you?"

"Yeah, I've come to activate your phone lines."

Seven Unsuccessful Inventions

- 1) Inflatable dart board.
- 2) Glow-in-the-dark sunglasses.
- 3) Powdered water.
- 4) Solar-powered flashlight.
- 5) Diet ice.
- 6) Cell phone table.
- 7) Lucite fireplace.



TOP 10 MOST UNPOPULAR HOLIDAY TOYS FOR KIDS

Look for deep discounts on these toys after the first of the year . . .

10. Baby's First Chain Saw
9. Junior Tort Lawyer Neckbrace & Legal Forms Kit
8. Chutes, Ladders and Open Manhole Covers
7. Mrs. Paul's "Finding Nemo" Fish Sticks 'n Chips Lunch Pak
6. Mr. Potato Head Multiple Outlet Strip
5. E-Z Bake Open-Flame Oven
4. Cooties — The Real Thing
3. Ouch! -- The Step-on-a-Rake Game
2. Mattel "Sweats 'n Scissors" Running Suit

And the No. 1 Most Unpopular Holiday Toy for Kids:

1. Hasbro Home Karaoke with 2,000-Watt Rooftop Speaker Set

TRUE FACTOIDS

U.S. courts spend more than half their time on cases involving cars.

The IRS employees tax manual has instructions for collecting taxes after a nuclear war.

David Rice Atchinson was President of the United States for exactly one day. This happened due to a glitch in American law at the time.

A surfer once sued another surfer for "stealing his wave." The case was thrown out because the court was unable to put a price on "pain and suffering" endured by the surfer watching someone else ride "his" wave.

All the Krispy Kreme donut stores collectively could make a doughnut stack as high as the Empire State Building in only 2 minutes.



ASK MR. LAW GEEK

Dear Mr. Law Geek:

Here's the deal. Like, me and my 4 best friends are riding around in the back of this dude's, like, truck. I forget his name. Anyways, he stops real quick and I like chipped a tooth when I like fell on a beer keg. I'd like to sue my dentist. Okay. Like, will you take the case?

Flawed Smile

Dear Flawed:

Case? I thought you said it was a keg.

Dear Mr. Law Geek:

My fiancé is a lawyer. She works in a BIG law firm, over 200 lawyers. She is a billing machine! I hardly ever get to see her. So, I don't know what to get her for Christmas. Any ideas? And nothing expensive. I'm a teacher.

Thrilled To Be Near A Lawyer

Dear Thrilled: Get her a life.

Dear Mr. Law Geek: I know you have probably answered this before, but my co-workers and I have a bet riding on this one. Were you wearing lipstick when your picture was taken for *In Brief*?

The Gambler

Dear Gambler: Does your employer know about this letter? Because I think I recognize your handwriting, and I also believe that Joe Farris would be very interested in knowing how the staff is spending their time when they are supposed to be working!

OKLAHOMA SUPREME COURT EXPANDS UM LAW . . . AGAIN

In *Ply v. National Union Fire Insurance Company*, 2003 OK 97, plaintiff was injured when he was told to operate a boom truck by himself and came into contact with an electrically-charged line. Because of the severity of his injuries, plaintiff was looking for insurance coverage after receiving worker's comp. He claimed that he was entitled to UM coverage on the boom truck he was operating when the accident occurred. The Court noted that Oklahoma's UM statute applies to an insured who is "legally entitled to recover from the owner or operator of an uninsured vehicle." The employer was the owner and if negligent, plaintiff might be able to recover UM. The Court ruled that an employer's non-contemporaneous negligent maintenance of an employer-owned vehicle may be sufficient to establish an employee's potential entitlement to UM benefits.

The dissent stated "Sometimes legal reasoning becomes so convoluted when applying marginally applicable cases in the construction of statutes that in the end result there is no resemblance to the apparent intent of the statute . . . the purpose of an uninsured motorist provision in an insurance contract is to protect the insured from the effects of personal injury resulting from an accident with another motorist who carries no insurance or is underinsured." At the risk of oversimplifying, who is the uninsured/underinsured motorist? The plaintiff had been the only motorist, and at the time of his accident, he was not a motorist."

The truck was parked and plaintiff was working alone. He raised the bucket mounted on back of the truck. He received severe electrical shock because the bucket contacted a live electrical line. Plaintiff properly recovered workers' compensation benefits. He then sued for uninsured motorist benefits. Clearly, the truck did not contribute to his injuries. It was his operation of the bucket that caused his injury, independent of the truck it was mounted on.

BEHIND THE SCENES:

Exclusive Interview With FFWFB's Legal Research Guru

JODY NATHAN

The IN BRIEF Staff has been on a 5-year quest for an interview with Jody Nathan, the legendary Chief of our Legal Research Department. "She's trying to get a brief out," was all her secretary would tell us. We finally caught up with her. . .

Jody: What are you guys doing in here? I've got to get a brief out.

In Brief: If we could just have a few minutes. We need one more page of stuff for the December issue.

Jody: Obviously you are desperate. Move that stuff off the chairs and sit.

In Brief: There's no place to put it!

Jody: Don't set me up with lines like that.

In Brief: Tell us, then, about your most memorable case.

Jody: That's hard to say, because there have been many. I liked the case where a man sued because he claimed the hospital had put transmitters in his teeth.

In Brief: No need to carry an MP3 player. What were his damages?

Jody: He said the transmitters had caused him to have to move to Florida and live in a "Sanford and Sons" type shack in a swamp.



In Brief: Is that the strangest case you've seen?

Jody: We defended a lawyer who was sued by a televangelist.

In Brief: The pot calling the kettle black?

Jody: It was claimed that the attorney, by suing the church and its pastor on behalf of his clients, was preventing the pastor from practicing his religion. It was couched as a conspiracy to deprive the pastor of his religious freedom. We won on summary judgment and it went all the way to the U.S. Supreme Court.

In Brief: Any other cases the readers would like to hear about?

Jody: We represented lawyers who were sued because they got a case dismissed. The dismissal was in a case where the plaintiff was trying to recover paintings allegedly stolen in London over 100 years ago.

In Brief: Any witnesses?

Jody: Just that guy with the transmitter in his teeth.

In Brief: Was there a trial?

Jody: We won on the briefs. The case

was so exasperating that we were forced to include a picture of Edvard Munch's "The Scream" painting at the end.

In Brief: Can you do that?

Jody: We try to make our briefs interesting, and to get straight to the point. If that involves including the words from Richard Gere's song in Chicago, "Razzle Dazzle," then we will include the song. We once included some lyrics from songs by the Supremes in a civil case against a stalker.

In Brief: How do you know which song to use in a brief? This wasn't taught in Legal Research class.

Jody: It's whatever you find yourself humming while you are writing the brief. But sometimes we use pictures. One member of the Research Department found it necessary to include a small joke, but it was in a footnote.

In Brief: I heard you represented Nike.

Jody: True. Nike was sued by a prisoner claiming he thought of the Swoosh logo and the phrase "Just Do It."

In Brief: How'd that one turn out?

Jody: Thrown out like an old pair of running shoes. We won it on the briefs. Then there was a case where a woman claimed she was hurt in a car wreck. The lawyer asked in a deposition why she didn't call 911. The woman said, "I wanted to, but I couldn't find '11' on the phone!"

In Brief: Are you making that up?

Jody: I don't have to make things up. Things are strange enough.

In Brief: What are you proudest of?

Jody: A case that went on appeal to the 10th Circuit. We wrote about 180 pages of briefs. The Justices complimented us on our "clear writing." I am proud of all of our work, but I find it particularly worthwhile to get a case dismissed early, saving the client's money and allowing me to work on other things.

EMPLOYEE PRIVACY RIGHTS

By Paula J. Quillin



What are employee privacy rights?
What matters are subject to privacy?
Is an employer protected?

Performance evaluations

Performance evaluations should include specified job related criteria. Superfluous comments about an employee's personal life or habits which are not job related may be considered invasions of privacy, especially if subsequent supervisors rely on those performance evaluations. Comments and evaluations should be strictly tied to the employee's job performance.

Certain documents should NOT be kept in personnel files, but should instead be kept in separate files. Physicals, medical records, workers' compensation information, investigation records for discrimination complaints, and legal case data should NOT be kept in personnel files. The reasons for these exclusions from the general personnel files vary from the fact that Americans with Disabilities Act mandates that all medical records be kept in confidential files separate from the employee's personnel file, to the fact that legal information should be kept in a separate file in order to preserve its confidential and attorney-client privilege nature. Occasionally, employees may want to include other documents in their personnel files. Unless those documents are directly related to their employment, employers should generally refuse to include them. Even enclosing a rebuttal drafted by an employee to a disciplinary notice is at the discretion of the employer.

Workplace Dating

Although employees have asserted rights to privacy and to engage in consensual workplace dating relationships, unless a state has adopted laws protecting all legal off-duty activities that do not directly conflict with the employer's legitimate business interest, private sector employees have few privacy rights that protect them within the workplace with regard to consen-

sual romantic relationships. If an employer has published an anti-fraternization policy, an employee's expectation of dating privacy is substantially weakened.

Even though courts allow discipline and even termination under anti-fraternization policies, employers should be aware that such policies must be uniformly applied to avoid discrimination claims.

Polygraphs

Private business sector use of the polygraph is restricted under the Employee Polygraph Protection Act of 1988, 29 U.S.C. §§ 2001-09. The EPPA was enacted to establish guidelines for examination conducted by private commercial employers.

The EPPA prohibits most private employers from using lie detector tests, either for pre-employment screening or during the course of employment.

Employers generally may not require or request any employee or job applicant to take a lie detector test, or discharge, discipline, or discriminate against an employee or job applicant for refusing to take a test or for exercising other rights under the Act.

Subject to restrictions, the Act permits polygraph tests to be administered to certain job applicants of security service firms (armored car, alarm, and guard) and of pharmaceutical manufacturers, distributors and dispensers.

Subject to restrictions, the Act also permits polygraph testing of some employees of private firms who are reasonably suspected of involvement in a workplace incident that resulted in specific economic loss or injury to the employer.

Computer Issues

To win a claim of invasion of privacy in most jurisdictions, a plaintiff must prove: (a) that there was an intrusion; (b) that such intrusion was intentional; (c) that the plaintiff had an objec-

reasonable expectation of privacy into the matter intruded upon; and (d) that intrusion was highly offensive to a reasonable person. Even if an employee proves all these elements, she may still lose if the employer had legitimate business reasons for engaging in the intrusion that outweighed the employee's privacy interest.

The most hotly contested element across those jurisdictions recognizing intrusion on seclusion is determining what constitutes a plaintiff's privacy interest. Regardless of the method of intrusion used, a plaintiff can recover only if he had an objectively reasonable expectation of seclusion or solitude in the place, conversation, or data source. First, there is generally no expectation of privacy in public or in the workplace. Second, courts are again utilizing narrow reasoning when discussing an objectively reasonable expectation of privacy in e-mail, using "voluntariness" of e-mail communications and property-based notions of ownership of computer systems to negate employees' privacy interests in their e-mail communications.

Courts are heavily dependent on property-based concepts of ownership of computers or computer systems when determining an employee's privacy interest in her e-mails.

Even if an employee had a reasonable expectation of privacy in his e-mails, such a privacy interest would be outweighed by an employer's interest in preventing inappropriate and unprofessional comments, or even illegal activity, over its e-mail system.

In a telephone monitoring case, the court found that an employer's interest in recording the phone calls must be balanced against the degree of intrusion resulting from an employer's methods used to obtain information.

In most cases, courts find that an employer's business interests outweigh the employee's privacy interest. Courts have generally upheld claims of invasion of privacy only where the employer's monitoring was physically invasive and had no legitimate business purpose.



Here's The Latest On FERAL CHIHUAHUAS

By Jody R. Nathan, Esq.

Perhaps in light of all of California's recent problems, it is not surprising that the plight of feral Chihuahuas roaming the wilds of southern California has not been picked up by the networks.

The problem came to light when neighbors of Emma Harter complained to authorities. A raid on the Harter property turned up 236 Chihuahuas living in filthy conditions. Because of the sheer number of Chihuahuas, nearly 200 of the little beasts had reverted to their wild ways. About 60 of the dogs were placed, but that left 174 which officials felt were *too wild* to be placed in homes. Authorities claimed that the animals had formed ferocious feral packs.

Even the Chihuahua rescuers indicated that the Chihuahuas were very unsocialized with severe behavior problems. They also stated the dogs were too threatening to be adopted by "regular Joe families." "They are pack animals and, as pack animals, are dangerous."

While some dogs were placed, including the puppies that were born after the dogs were confiscated, the authorities wanted to put down the remaining 174. This proposal roused the ire of many animal rights advocates.

The Chihuahuas had their day in Court, however, and were saved from imminent death.

As much as I appreciate dogs, I felt ambivalent about the plight of the feral Chihuahuas. On the one hand, I believe that with a sturdy pair of combat boots I would be able to fend off any pack of wild Chihuahuas, no matter how disturbed they might be. Nevertheless, I also have a picture in my mind of the pack

of wild Chihuahuas picking a cow carcass clean as they roam the desert unchecked.

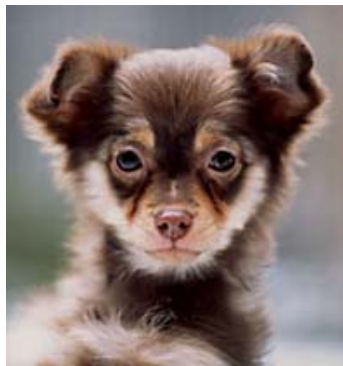
The unadopted Chihuahuas were ultimately released into the custody of a Chihuahua rescue operation. Apparently 400 people had volunteered to adopt the little monsters. The judge liked the solution, since the county had incurred more than \$500,000 in costs caring for the dogs.

In a strangely-related story, New York City has been experimenting with the use of hawks to keep down the pigeon population. When one of the hawks mistook a Chihuahua for a rat, however, he was out of a job.

To finish this roundup of Chihuahua news, in January, Gizmo the Chihuahua bit off more than he could chew. Jennifer Gilbert called 911 after her pet suddenly began to choke and stopped breathing. .

There's no established procedure for helping a choking Chihuahua, but the dispatcher worked from emergency information cards designed for people.

"I just asked her what kind of dog it was," said the dispatcher. "I just figured a Chihuahua is small — small enough to go to the infant card."



First she instructed Gilbert to give Gizmo a few whacks on the back. At first it didn't seem to help, and Johnson called for a police officer to head to Gilbert's home to help.

"He just spit up something. OK. It was, a... Oh my God..." Gilbert said, according to the 911 transcript of the call.

It turned out that Gizmo had almost been done in by his own kind — almost. The pooch had bitten the nose off his favorite toy, a talking Taco Bell Chihuahua doll.

QUICK JOKE

Two factory workers were talking.

"I know how to get some time off from work." said the man.

"How do you think you will do that?" said the blonde.

He proceeded to show her...by climbing up to the rafters, and hanging upside down. The boss walked in, saw the worker hanging from the ceiling, and asked him what on earth he was doing?

"I'm a light bulb," answered the guy.

"I think you need some time off," said the boss. So, the man jumped down and walked out of the factory. The blonde began walking out too. The boss asked her where did she think she was going?

"Home. I can't work in the dark."

NEW COBRA REGS

The Department of Labor has issued proposed regulations affecting the content of notices to be provided under COBRA. It is not clear when the DOL regulations are to take effect but the DOL has published sample notices employers can start using to be in compliance with COBRA. A copy of the notices can be obtained from our offices or copies can be obtained through the DOL website at: www.dol.gov/ebsa/compliance_assistance.html#section1.

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