



June 15, 2005

Tulsa, Oklahoma

SUPREME COURT ALLOWS DISPARATE IMPACT AGE DISCRIMINATION CLAIMS

The United States Supreme Court has decided that older workers may pursue age discrimination claims when they have been adversely affected, even though the employer's policy or procedure was facially neutral. This "disparate impact" theory has long applied to Title VII claims for sex discrimination.

The case before the high court involved employees in Mississippi employed by the City of Jacksonville. The city had adopted a pay plan to improve retention and bring starting salaries of police and public safety officers up to the regional average. Officers who had less than five years of tenure would receive proportionately greater raises when compared to their former pay than those with more seniority.

Most officers over the age of 40 had more than five years of service. A group of older officers sued the city, contending that the salary increases they received violated the ADEA because the increases were smaller for officers over the age of 40 than for younger officers.

In their suit, the officers claimed that the city deliberately discriminated against them because of their age and that the city's plan adversely affected them because of their age. The lower court ruled for the city on both claims, holding that disparate impact claims were not available under the ADEA. The Supreme Court held that employees can pursue a disparate impact claim under the ADEA, but that the City should prevail in this case. The City's decision to give larger raises to lower level employees for competitive reasons was based on a reasonable factor other than age, so it was permissible.

Employers should evaluate changes in policies and benefits which could have an adverse impact on older workers.

Employers must ensure that practices and policies that adversely affect older workers are based upon reasonable factors other than age. Employers should use means that are rationally related to some legitimate business and should consider plans to reach the same goals that may not have an adverse impact upon older workers.



KEEPING A LID ON THE NEWS

WE ARE PROUD OF ...

...our lawyers for their recent accomplishments

Joe Farris and Jody Nathan were successful in obtaining dismissal of a malicious prosecution suit.

Jason Goodnight won the trial of a lawsuit against a major motel chain for negligence and assault and battery.

Joe Farris and Paula Quillin won the appeal of a legal malpractice suit.

Joe Farris and Jody Nathan were successful in vacating a default judgment in federal court based on lack of proper service and jurisdiction among other grounds.

Thayla Bohn won an appeal from an order dismissing an attempted garnishment of a commercial insurance policy.

Paula Quillin won a motion to transfer venue in a wrongful termination case.

Joe Farris, Paula Quillin, and Jody Nathan obtained dismissal of a legal malpractice suit.

Paula Quillin obtained dismissal of two cases: a legal malpractice suit and also a sex and race discrimination suit.

Victor Wandres obtained dismissal of a bankruptcy case, clearing the path to collect the amount owed to our client.

Joe Farris, Thayla Bohn, and Jody Nathan were successful in getting various claims for spoliation dismissed against a trucking client.

Paul Boudreaux successfully mediated a toxic tort claim.

John Woodard and Jason Goodnight won a motion to transfer venue in a suit against a trucking company.

Paula Quillin won an appeal from the trial court's dismissal of a personal injury and wrongful death claim against our client.

Paul Boudreaux, Jody Nathan & Jasen Corns opposed a motion to dismiss so successfully that the federal court spontaneously entered an order requiring the opposing party to show cause why sanctions should not be imposed.

Ask
Mr.
Law
Geek



Dear Mr. Law Geek: I am so angry I could scream. I think my next door neighbor is stealing my socks out of the dryer. Every time I do the laundry, socks turn up missing. How do I prove it, though?

—*Sock It To Me*

Dear Sock: I don't think your neighbor's responsible. Everyone loses socks in the dryer. Socks are in fact a larval form of coat hangers. Look in your closet, and there they are!

Dear Mr. Law Geek:

When I was in college, I made my own fretless banjo, using a real cat skin left over from a biology class. I've been invited to play and sing at the annual office party. Several employees are members of PETA. So will they be able to sue for discrimination if I sing?

—*Paula Quillin*

Dear Paula: Is that your real name? Are you Paula the Bluegrass Queen? If so, I've heard you sing. And the answer is yes, they can sue, but not for discrimination. It would be intentional infliction of emotional distress.

Dear Mr. Law Geek:

Quick employment question. One of our employees is on an environmental kick. He won't touch the front door knob at the office because dolphins are unable to use it. So he waits outside until someone else opens it, making him late for work. Can I fire him?

—*Frustrated Boss*

Dear Frustrated: Federal law requires that you accommodate this employee by providing a means of access that he can swim through. A lap pool from the parking lot should do nicely.

WARNING: LIGHT SABERS FOR USE BY JEDI ONLY

By Jeremy Ward

The recent craze over *Star Wars: Episode III – Revenge of the Sith* has caused some disastrous results. All over the globe fanatics have strapped on costumes, dug out props, and reenacted scenes from the film. As a result of this recent craze, one could conclude that the force is not only powerful, but if not used properly, so powerful as to interfere with ordinary common sense.

For example, recently in England, two individuals, a twenty year old male and a seventeen year old female, were placed in critical condition at a local hospital after being severely burned when a home made light-saber exploded. At the time, the two individuals were trying to reenact a light-saber battle between Obi-Wan Kenobi and Anakin Skywalker. For those of you not familiar with *Star Wars*, a light-saber is a handheld weapon, used only by a Jedi, which is approximately a meter in length of pure energy, maneuvered in the same fashion as a sword. The energy beam can cut through everything—except another light-saber. As can be assumed, a light-saber is more than a flaming glass tube.

Police were notified of an explosion in a wooded area. When police arrived on the scene, two individuals were lying on the ground suffering from severe burns. Police did not know the exact cause of their injuries, but later discovered the two individuals had tried to video tape their reenactment. The video tape was reviewed by police, and from the information, police were able to determine the cause of their injuries.

While reviewing the tape, police realized the two individuals had engineered home made light-sabers. Since, they had a desire to create an extremely realistic saber, the two *Star Wars* fans decided to use a fluorescent tube light bulb for the meter long energy storage chamber. The two had decided that a tube light bulb could



have similar characteristics to an energy beam, if they could only make it light up or glow.

Next, they removed an end cap from the bulb and filled the tube with an extremely flammable liquid, i.e., gasoline, etc., hoping the tube would glow. After the flammable liquid was in the tube, they proceeded to light the fuel. Shockingly, the "light-saber" exploded injuring both of them.

Obviously, a lesson can be learned from the misfortune of these two individuals. When reenacting scenes from a science fiction movie, flammable liquids placed in a thin glass container could explode. More importantly, remember light-sabers are only to be operated by an acknowledged Jedi because in the improper hands, the force is extremely powerful, and extremely dangerous.



Indications You Might Be In Trouble At Work

1. The new policy on sexual harassment includes a photo of you.
2. The Security guard made a complete inventory of your work area.
3. Your assistant began responding to your memos with, "Yeah, whatever."
4. Your new Pentium 4 was replaced with a 386SX last weekend.
5. The Human Resources Dept requested an update of your arrest record.
5. The Boss asked if you still have a copy of your 5-year contract.
6. Co-workers were measuring your office when you arrived at work.
7. Three people began helping you write a "desk manual" for your job.
8. The LAN suddenly began backing up your computer every 10 minutes.
9. A large paper recycling box was placed next to your file cabinets.
10. No one but you got paid on Tuesday the 21st.



News!!! Back on the Job!

The Editor/Censor wishes to inform our dedicated *In Brief* subscribers that the Top Secret Underground Clandestine Reporter of the Elusive Truth (hereinafter "008 1/2") (her shoe size) responsible for the creation and publication of this newsletter is back on the job despite a recent health scare. While we suspected that 008 1/2 was heartless, we were proven wrong when, during open-heart surgery, surgeons discovered that she indeed has a heart, although it was in need of repair. That explains some of the articles that have appeared in the newsletter and certainly accounts for several of the articles that never made it past the Editor/Censor. Unfortunately, neither tact nor good taste were discovered during the surgery. Therefore, it appears that the quality of *In Brief* will remain true to the standards that you have come to expect.

Although the hospitalization of 008 1/2 generated significant material for articles, including but not limited to, legal questions regarding inquiry into the daily input and output of the patient, the Editor/Censor has, true to form, censored that material. Nevertheless, feel free to insert your own favorite hospital humor regarding hospital gowns, nursing staff, drug induced hallucinations, and visits by sincere but misguided well-wishers in the space provided below.

The Editor/Censor reminds you gentle readers, in the comforting words of the nurse who bounced into the hospital room to set our minds at ease immediately prior to surgery, "Visit while you can."

Space for Interactive Participation:

ADA CASE NETS

\$10.6 MILLION FOR TERMINATED EMPLOYEE

A disc jockey was fired by a country music radio station because of a severe allergic reaction to a colleague's perfume. No sweat -- she recently received a \$10.6 million jury verdict against Infinity Broadcasting Corporation, the owner of WYCD-FM in Southfield, Michigan.

The suit, filed in federal court, claimed discrimination. Weber contended that her violent reaction to "toxic chemicals" which had been spilled in the radio station's studio in 1999 caused her to suffer chemical burns in her airways, and vocal chord swelling. She also claimed difficulty breathing, and laryngitis. The toxic chemicals also had the effect of increasing Weber's sensitivity to her colleague's perfume.

Weber's doctors warned of her severe allergy to the perfume worn by another disc jockey, saying further exposure could result in "the possibility of death."

Weber claimed she experienced retaliation after she filed a discrimination complaint with the EEOC. She contended that the station did not accommodate her health issues and she missed work, which contributed to her termination.

Sometimes it is possible to fire an employee without exposing the company to serious liability. At other times, a lawsuit is filed and it is unjustifiable. In those situations, it's good to "know when to fold 'em.'" When in doubt, review the situation with your attorney in light of the American With Disabilities Act.



Associatology 101: The Buzz From The Water Cooler



Belinda Aguilar recently passed the Oklahoma Bar Examination on her first attempt. Aguilar would

neither confirm nor deny rumors that she was the test-taker who, for some reason, used the names “Joe Farris” and/or “John Woodard” in all sixteen of her essay answers. “I found the references odd,” admitted one bar examiner, who wished to remain anonymous. According to the examiner, one answer to a complicated business tort question simply stated, “I would refer this client to Joe Farris or John Woodard” and left the remaining five pages blank. “Frankly,” admitted the examiner, “I couldn’t think of a better answer myself.”

Thayla Painter Bohn gently persuaded an elementary school administrator to place her precocious son into a preferred kindergarten classroom. After the school explained that years of policy and precedent prevented such a move, Painter Bohn sent a one-sentence letter, which somehow used the words “litigation,” “subpoenas,” “depositions,” “attorney’s fees,” and “punitive damages” in the same highly-effective sentence. Painter Bohn followed with a surprise personal visit to the school, bringing along three briefcases and a court reporter. Her son was enrolled that same day.

Jasen Corns proved that simply being a single young lawyer is not nearly enough to impress females. In possession for weeks of two of John Woodard’s famed front-and-center

tickets to the Tulsa Opera, Corns somehow nearly managed to arrive dateless and ensure that he would never again be the recipient of such generosity. With just hours before showtime, he mercifully stumbled into a blind date. “It’s a sad commentary on his sex appeal,” marveled Joe Farris. “I’m obviously going to have to do some mentoring.”

Jason Goodnight recently hung two low-cost paintings on his office walls, thus elevating the appearance of his office to a level slightly above a file room. He was overheard bragging about his new décor while sipping a frothy beverage at a local watering hole. “My office smells of rich mahogany,” Goodnight told the unimpressed cocktail waitress, “and I have many leather-bound books.”

A panicked **Curtis Roberts** avoided catastrophe in Colorado recently when he arrived in Denver after his connecting flight to Colorado Springs had departed. Frantic, Roberts placed an emergency call to seasoned business traveler Jason Goodnight. “What do I do?! What do I do?!” Roberts cried. “The plane is GONE! It’s GONE!” When Roberts stopped to take a breath, Goodnight calmly explained the solution. “You drive, son. You drive.” “Ohhh,” replied a wondrous Roberts, who miraculously made the deposition on time. Goodnight billed six minutes for the lesson.

Moments before his wife Vicky returned home from a four-month stay in San Diego, **Paul Prather** had to physically evict an old college buddy who had been crashing on his sofa since

Vicky left. Prather’s behavior had become peculiar since living with his old friend, and no one was happier about the eviction than John Woodard. “I was getting awfully tired of seeing Prather stumble into work at noon, wearing sunglasses and old concert t-shirts and smelling like a brewery,” said Woodard. Vicky did not know about the houseguest, but has been pestering Prather with questions about his dramatic weight gain in her absence.

Victor Wandres and his lovely bride recently took a lengthy vacation to Jamaica. When Wandres returned, however, he was unrecognizable. “I never knew a white boy could grow dreadlocks,” groaned John Woodard. “And why are his eyes so bloodshot?” Since returning, Wandres has practiced law behind a closed door, with the unmistakable sounds of reggae jam bands emanating from his office. When *In Brief* asked Wandres to explain his recent behavior, Wandres, wearing a tie-dyed shirt, sandals, and linen blazer, simply said: “I found my home, mon! Jamaica is where it’s at. I be outta here in a year.”



Congratulations to **Belinda Aguilar** for passing the Oklahoma Bar exam. Belinda has been officially sworn in and is now armed and dangerous.

Paul Boudreaux was nominated and approved as a Diplomat of the American Board of Trial Advocates, ABOTA’s highest honor.

The firm welcomed back **Jeremy Ward** to work as a Summer Law Clerk. Jeremy will soon begin his third year of law school. We were going to interview him and pound him with incisive questions, but he’s too busy.



Top 10 Signs You Might Be In the Hospital

You wake up and see bed rails. You suspect you might be in the hospital. Here's how you know for sure. . . .

10. Relatives you haven't seen in 25 years are hovering over your bed.
9. At least half of them are urging you to eat more Jell-O.
8. The general public has acquired an unanticipated interest in your daily bowel movements.
7. Your last "movement" generated more interest than the Super Bowl.
6. Two of your third cousins are fighting over who gets your stereo system.
5. The foot traffic through your room rivals last year's Boston Marathon.
4. At least 2/3 of all visitors to your room wield needles.
3. After a night of needle-wielding technicians, you've been sucked drier than an Everglades camping weekend without Deet.
2. This many people haven't told you how good you looked since your Senior Prom. Most of them said the same thing about Aunt Edna — at her funeral. The other ones remind you that Aunt Edna died of your same malady.

And the No. 1 sign you might be in the hospital:

1. First time you've seen any member of the clergy since . . . well, since Aunt Edna's funeral.



Bookmarks:



USEFUL WEB SITES

Pig Latin Translator: <http://www.wordplays.com/fcgi-bin/pig.pl>

Get advice from total strangers: <http://www.dearanyone.com>

eGad—the World's Online Junk Bin <http://www.capnwacky.com/eGad/>

Spamusement—Poorly drawn cartoons inspired by Spam email headings <http://www.spamusement.com/>

Asciimation Wars — Star Wars comes to the small screen near you. <http://www.asciimation.co.nz/>

Things You Never Knew Existed—(but now that you do, you need them) <http://johnsonsmith.com/website/aspfiles/home.asp>

Unfortunate Greeting Cards — <http://www.capnwacky.com/cards/>

Trunk Monkey — Who doesn't need one?— <http://www.trunkmonkeyad.com/>

IT'S A FACT . . .

State with the highest percentage of people who walk to work: Alaska

$111,111,111 \times 111,111,111 = 12,345,678,987,654,321$

The electric chair was invented by a dentist.

There are more plastic flamingos in the U.S. than real ones.

A snail can sleep for three years.

The shortest war on record lasted just 38 minutes. It was between Britain and Zanzibar in 1896.

A FEW SHORT JOKES



Judge: "Well, Sir, I have reviewed this case and I've decided to give your wife \$775.00 a week."

Husband: "That's fair, your honor. I'll try to send her a few bucks myself."

Two blondes were driving along a road by a wheat field when they saw a blonde in the middle of the field rowing a row boat.

The driver blonde turned to her friend and said "You know - it's blondes like that that give us a bad name!"

To this, the other blonde replies "I know it, and if I knew how to swim, I'd go out there and drown her."

When the waitress in a New York City restaurant brought him the soup du jour, the Englishman was a bit dismayed. "Good heavens," he said, "what is this?"

"Why, it's bean soup," she replied.

"I don't care what it has been," he sputtered. "What is it now?"

A lawyer was on his cell phone, calling a locksmith.

"I locked my keys in my sports car!" said the nervous lawyer.

"No problem, I should be there in about an hour," replied the locksmith.

"Do you think you can make it a little sooner?" pleaded the lawyer. "My top is down and it's starting to rain."



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