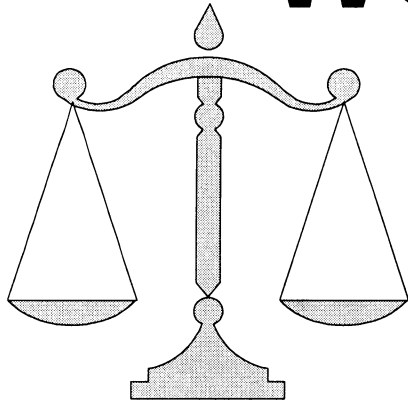


# Workplace Watch



Keeping an Eye on  
Developments in  
Employment Law for  
Employers and Employees

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## *NEW CASES EFFECT LEGAL RIGHTS OF EDUCATORS*

### *Litigation*

▪ **EDUCATORS; COLLECTIVE BARGAINING.** The Court of Appeals ruled that a teacher's technician could not pursue an arbitration claim that she was actually performing higher level duties and was entitled to a higher pay level. Since job descriptions were not referenced in her union's collective bargaining agreement, the claim was not subject to the grievance-arbitration clause. *District 318 Service Employees Association v. Ind. School Dist. No. 318*, 649 N.W.2d (Minn. App. 2002).

Educators in early childhood family programs are not "public employees" under the state Public Employees Labor Relations Act (PERA). The Court ruled that because they worked part-time and the classes were not required by law, the teachers could not be members of public sector labor unions. *Education Minnesota v. Ind. Sch. Dist. No. 695, Chisholm*, 649 N.W.2d 474 (Minn. App. 2002).

▪ **RACIAL DISCRIMINATION.** An African-American college professor can sue for failure to achieve a promotion, even though he did not apply for the vacancy. The Eighth Circuit Court held that a claimant, who was chairman of the department, can proceed with a lawsuit after he was wrongfully denied the position of dean, a vacancy which had been filled by a white man. Although the African-American claimant did not apply for the position, there was "direct evidence of racial discrimination" stemming from the school's lack of any clear-cut procedures for applying, or any statements of the timing and/or deadlines for applications in the official announcement of the vacancy. *Lockridge v. Board of Trustees of the University of Arkansas*, 301 F.3d 958 (8<sup>th</sup> Cir. 2002).

▪ **LEAVES OF ABSENCE.** A police chief whose medical condition was discussed in public by the members of the city council after he returned from medical leave cannot sue for invasion of privacy or other wrongdoing. In the instant case, elected officials discussed the chief's treatment by a psychologist due to work-related stress, a condition that the court deemed was not so offensive in light of the well-known pressures faced by law enforcement personnel. *Cooksey v. Boyer*, 289 F.3d 513 (8<sup>th</sup> Cir. 2002).

An employee who was misinformed about the beginning date of a leave of absence and fired when he did not return to work when the leave expired can assert estoppel against the employer in a claim under the Family & Medical Leave Act (FMLA). The employee was on short-term disability leave for several months after a work-related injury. The employer then informed the employee that the 12-week period of FMLA leave would begin later. When the employee contacted the employer and asked about the FMLA leave, he was told that the information was erroneous, that the previous leave of absence had expired, and that the employee was fired for not returning after the leave ended. The Eighth Circuit held that the employer was estopped from terminating the employee because the employee reasonably relied upon the information about the beginning date of his FMLA leave, even though it was erroneous. *Duty v. Norton-Alcoa Proppants*, 293 F.3d 481 (8<sup>th</sup> Cir. 2002).

### *Legislation*

Portions of a rule under the Federal Occupational Safety & Health Act (OSHA) that would require certain employers to provide detailed records of all illnesses and injuries suffered by workers on the job may be delayed another year for reconsideration by the U.S. Department of Labor. The rule revises and simplifies OSHA requirements that employers keep detailed "illness and injury logs" and make them available to governmental inspectors. The Labor Department proposed delaying provisions governing recording of injuries causing musculoskeletal disorders so that OSHA can determine whether to change its definition of the phenomenon for record-keeping purposes and, if so, what definition is appropriate for these type of injuries.

A proposal to bar mandatory arbitration for claims of employment discrimination has been introduced in the House of Representatives, H.R. 2282. Another bill, H.R. 815, would give employees the right to decide whether to use arbitration *after* a dispute arises, but would prohibit employers from requiring employees to agree to arbitration as a condition of employment. The two measures would overturn the ruling of the U.S. Supreme Court in *Circuit City Stores, Inc. v. Adams*, 121 S.Ct. 1302 (2001), upholding mandatory arbitration clauses in employment agreements.

## Explaining Employment Enigmas



**Marshall H. Tanick** of the law firm of **MANSFIELD, TANICK & COHEN, P.A.** recently explained a number of enigmas relating to employment law to a group at a luncheon meeting of the Young Lawyers' section of the Hennepin County Bar Association. **Mr. Tanick** spoke on the topic of "Assessing Employment Cases: The Good, The Bad & The Ugly." He offered ten tips to young lawyers in handling employment law cases for both employees and employers. His presentation culminated in "the perfect case," which he, regrettably and realistically, explained does not exist. After the presentation, **Mr. Tanick** (second from left) joined **Brian Dockendorf** (second from right), an attorney with the law firm of **MANSFIELD, TANICK & COHEN, P.A.**, who coordinated the program to answer questions from a couple of young attorneys **Maria Lindstrom** (left) and **Craig Sandhock** (right).

### ARBITRATION CLAUSE DOES NOT BAR TO EEOC LAWSUIT

The preference of the Supreme Court for arbitration in workplace disputes is unmistakable. During its 2001 Term, the Court ruled upon five arbitration agreements, upholding the arbitration process in each of the cases. Several of them dealt with employment-related matters. See *ADR Watch*, "Three Major Arbitration Cases Decided," Winter, 2001.

In one of those cases, *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001), the Court held, by a 5-4 vote, that arbitration agreements between employers and employees are binding on employees and prevent them from suing. But the Court took a different tack earlier this year in another case involving a workplace arbitration agreement.

In *EEOC v. Waffle House, Inc.*, 534 U.S. 279 (2002), the Equal Employment Opportunity Commission (EEOC), the federal agency that receives compliance with the federal discrimination laws, brought a lawsuit against the employer for discrimination due to race against the employee. The employer sought to dismiss the litigation, pointing out that the employee had entered into an arbitration agreement with the

company that precluded any lawsuits.

The High Court however held that the arbitration agreement did not bar the EEOC from proceeding with its action. The Court reasoned that the administrative agency was not prohibited from litigating because it was not a party to the arbitration agreement entered into between the employer and the employee.

"This decision is important because it allows administrative agencies like the EEOC and Minnesota Department of Human Rights to pursue litigation even if the employee has signed an arbitration agreement barring litigation," said **Teresa J. Ayling**, an attorney with the law firm of **MANSFIELD, TANICK & COHEN, P.A.** "The ruling gives employees a chance to pursue discrimination claims for administrative agencies in court even if they have signed a binding arbitration agreement," she added.



*Teresa J. Ayling*

*Workplace Watch* is produced by the law firm of **MANSFIELD, TANICK & COHEN, P.A.** as a complimentary service to its clients and other interested readers. Further information about any of the matters discussed in this material, or other workplace litigation as well, can be obtained by contacting the law firm at (612) 339-4295 or by FAX at (612) 339-3161.

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