The McCroskey Advisor

Published for the clients and friends of the law firm of McCroskey, Feldman, Cochrane, & Brock, P.C.

Serving the injured and the worker since 1949

Volume 7, Number 1 May 1999

Feds scrap harsh new social security rules

New regulations would have reduced social security for workers compensation recipients

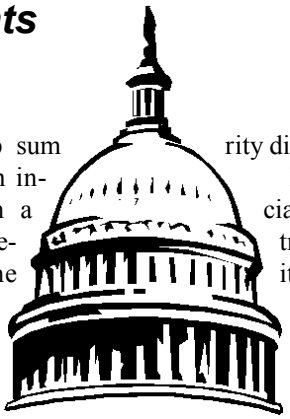
by Gary T. Neal

The Social Security Administration has dropped a proposed rule change, published in April, 1998, which would ignore lifetime allocation of workers compensation settlement proceeds.

The Social Security Administration recently called the proposal "completely dead."

The proposed rule was intended to reduce social security disability benefits when an injured worker settles or redeems his or her workers compensation case.

Presently, if a workers compensation claim is settled for a lump sum amount, the redemption order can include language which sets forth a reasonable allocation of the settlement proceeds prorated over the worker's lifetime. There is little or negligible effect of such a redemption on the worker's calculated social security disability benefit entitlement.



If Congress passed the proposed rule, a redemption of a workers compensation claim would have significantly reduced the worker's social security disability benefits.

Fortunately, the Social Security Administration has terminated its efforts to pass the rule change.

It is important to remember that in order to take advantage of the lifetime allocation when settling a workers compensation claim, there must be language to that effect in the redemption order.

If an injured worker is receiving weekly workers compensation benefits, and is also receiving social security disability benefits which are significantly reduced, settlement may be appropriate in some cases in order to maximize social security disability entitlement.

If an injured worker has questions regarding the interplay between social security disability and workers compensation, he or she may call McCroskey, Feldman, Cochrane, and Brock, PC, for a free consultation.

Attorney Gary T. Neal specializes in workers compensation and social security disability law.

McCroskey Law Offices adds two lawyers, Cochrane retires

McCroskey Law Offices has recently added two lawyers to its staff.

Paula Olivarez has joined the firm's Battle Creek Office where she will practice workers compensation with attorney Jim Haadsma.

Olivarez received her BA from Michigan State University in 1980, and graduated from Thomas Cooley Law School in 1986. She resides in Lansing with her husband, Richard, and her children Greg, Candace, and Alex.

Before joining the firm, Olivarez served eight years as a workers compensation magistrate. She also worked as a staff attorney with the Workers Compensation Appellate Commission.

Jennifer Crawford will join the firm's Muskegon office in June, and

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Disabled employees may take unpaid medical leave under ADA

by Thomas Cochrane

A recent federal court case held that workers with disabilities may, in certain circumstances, be entitled to medical leave under the Americans with Disabilities Act.

In *Cehrs v. Northeast Ohio Alzheimer's Research Center, 8 Am. Disability Cas. (BNA) 825 (6th Cir. 1998).*, the plaintiff suffered from chronic psoriasis and psoriatic arthritis. The disease was dormant for long periods, but would flare-up periodically.

During a flare-up, Ms. Cehrs was completely unable to work or perform common daily functions such as driving or dialing a telephone.

The Sixth Circuit Court of Appeals reversed the trial court's ruling granting summary judgment to the defendant. The Court rejected the defendant's argument that Cehrs was not substantially impaired because the condition only flared-up occasionally.

The Court held it is not necessary for disease symptoms to be experienced on a daily basis for the disease to be considered an impairment under the ADA.

The fact that the disease is chronic is sufficient, because it has a physiological impact on Cehrs' body even while dormant.

The Court concluded that Cehrs' psoriasis substantially limited a major life activity because the disease caused persistent skin irritations, Cehrs' was afraid of other peoples' reactions to her condition, and because the disease dictated her appearance and the clothes she wore.

The Court rejected the Research Center's argument that giving Cehrs unpaid leave time constituted a substantial hardship and was not a reasonable accommodation under the ADA.

The Court rejected a *per se* rule proposed by the Research Center that unpaid leave of indefinite duration can never be reasonable accommodation,

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Two lawyers join the McCroskey firm, Cochrane retires

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will practice workers compensation. Crawford received her BS from Grand Valley State University in 1996, and will graduate from the Detroit College of Law in May. She and her husband, Wayne, reside in Grand Haven.

"We're very excited to have Paula and Jennifer on board." says firm president Robert Chessman. "Paula had a magnificent reputation as a magistrate, and we're honored to have her join our practice."

Crawford is a very promising law student, adds Chessman, and the firm is looking forward to her arrival.

"Jennifer has interviewed with each of the firm's lawyers," says Chessman, "and was enthusiastically endorsed by all."

While McCroskey Law Offices has added two lawyers, it has lost its senior partner. Darryl Cochrane retired from the practice of law in December, 1998, and joined Local 406 of the International Brotherhood of Teamsters as a business agent.

Cochrane joined the firm in 1965 and practiced workers compensation and labor relations. He received numerous honors over the course of his career. In 1996 the AFL-CIO West Michigan Labor Council honored Cochrane for "untiring devotion and personal sacrifice in the service of laboring people," and Cochrane has been named to the legal referral guide *Best Lawyers in America* every year since 1989.

Attorney J. Walter Brock of McCroskey Law Offices' Muskegon office graduated from the University of Michigan Law School with Cochrane in 1965. "Darryl doesn't come into the office every morning anymore, but he's still with us." says Brock. "Darryl is still of-counsel with the firm, and we consult with him regularly."

Brock adds that Cochrane's son Thomas practices law with the firm. "Tommy has taken over our labor law practice, and Darryl and Tommy work together on many cases."

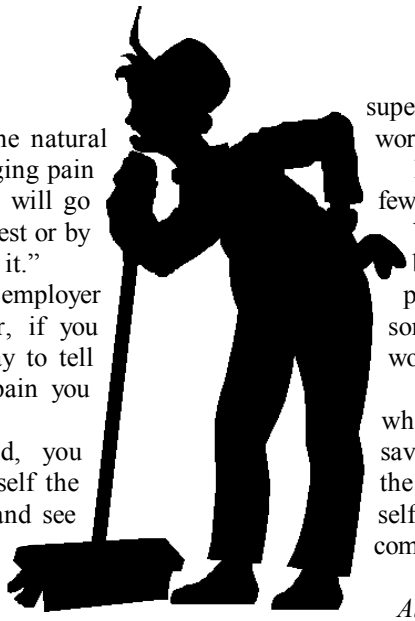
Brock says Cochrane will be teaching a segment at the firm's annual labor law seminar.

Cochrane says he could not be happier with his new position. "I love working with the Teamsters." he says. "I miss working with my old friends and clients, but I had reached a point in my career as a lawyer where I wanted to make a change, and this seemed right for me."

"Tell them you're hurt"

If you feel pain while working, no matter how minor, report it !

by Paula Olivarez



After eight years on the bench as a Workers' Compensation Magistrate, I have been through a countless number of hearings.

The majority of the time, the litigants are arguing over the work-relationship of the workers' disability.

This argument arises, in large part, because, too often, workers ignore the aches or pains they feel on the job. They don't tell anyone that they are hurting because they don't think of nagging pain as an injury.

Somewhere, there seems to exist some kind of unspoken rule for reporting work injuries. The general thinking seems to be that there is no injury unless there is (1) blood, or (2) an unconscious body.

This is wrong. Nagging pains or minor injuries can become big problems. That's why they need to be reported.

I know that the natural reaction to a nagging pain is to think that it will go away after some rest or by "working through it."

Think of your employer reaction, however, if you wait until Monday to tell them about the pain you had last Friday.

In your mind, you were giving yourself the weekend to rest and see how it felt.

Some employers, however, will doubt you were hurt at work. They will suspect you hurt your back as you mowed your lawn over the weekend.

Therefore, it is critical to tell your supervisor if you have pain at work.

For good measure, tell a few of your coworkers too. You don't have to make a big deal out of it; just let people know that you have some pain while you're working.

Letting people know when you are hurting can save you a lot of problems in the long run if you find yourself embroiled in a workers compensation lawsuit.

Attorney Paul Olivarez is based in the law firm's Battle Creek office, and specializes in workers compensation law. She served as a Workers Compensation Magistrate from 1990 to 1998.

Workers Compensation statute is unfair to older workers

by J. Walter Brock

With the advent of early retirement and a healthy, aging population, we are seeing many workers who leave a physically or mentally demanding job and begin retirement at an early age.

Then, when they find out that retirement is boring, or that they are short of money, they return to work.

Many times, of course, the return to work is a part time job which is much less demanding than the job from which they retired.

This is all well and good and works to everyone's advantage -- until an injury occurs.

If there is an on-the-job injury to a worker who is past age 65, the full weekly benefit is not paid. For every year past 65 the insurance carrier can reduce the benefit rate by 5%.

The statute upon which employers rely when denying full benefits to older workers was written into the Workers Compensation Act because the legislature perceived that workers injured before age 65 should not be able to draw

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Imposing discipline for job accidents is unreasonable

A recent arbitration decision says an employer may not punish employees for on-the-job injuries

by Thomas B. Cochrane

In a recent case handled by McCroskey, Feldman, Cochrane, and Brock, PC, an arbitrator struck down a work rule punishing employees for injuries.

The Company, a west Michigan soft drink bottling company, wished to implement a work rule that disciplined employees for "excessive, OSHA-reportable, on-the-job injuries."

Any employee who violated the work rule four times in a year could be discharged.

The Union, Teamsters Local 406, grieved the rule. Teamsters Business Agent Scott Ames argued the work rule was unreasonable, and should be struck down.

At the arbitration hearing, the Company's employee relations manager testified that discipline would be issued to any employee who received an injury requiring the employee to leave the workplace to receive medical attention.

The Company said the new rule was implemented because some employees appeared to be incurring more injuries than normal.

The Company assumed some or all of the employees in question were working in an unsafe manner. It argued it did not have to put up with repeated injuries from accident-prone employees.

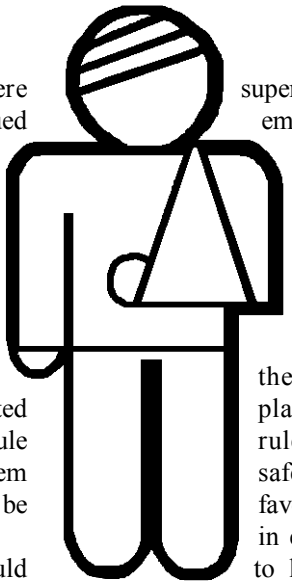
The Union argued that the work rule would do nothing to promote safety, and could actually make the workplace more dangerous.

A work rule, said the Union, must have some relationship to the stated purpose of its issuance. If the work rule will not have any effect on the problem it is meant to solve, it should not be implemented in the first place.

The rule, argued the Union, would have the opposite effect. It would discourage employees from reporting accidents, because they would fear discipline. Hazards in the workplace would go unreported, resulting in an increase in injuries.

The Union also argued the rule was inherently unfair, because an employee could be disciplined for an accident without regard to whether the employee caused it.

Under the proposed rule, the Union said, it would even be possible for a supervisor to order an employee to work in an unsafe manner, and then discipline the employee when an accident occurred.



In his decision, the arbitrator explained that work rules promoting safety are generally favored, because it is in everyone's interest to have a safe work environment. He pointed out, however, that the Company presented no evidence that the work rule would promote safety.

Without such evidence, the Company's proposed rule could not withstand arbitral scrutiny.

The grievance was granted, and the work rule was struck down as unreasonable.

Attorney Thomas B. Cochrane specializes in labor relations and employment law.

ADA accommodation

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saying that "medical leave of absence can constitute a reasonable accommodation under appropriate circumstances."

The *Cehrs* case teaches that employees with disabilities may be entitled to take unpaid medical leave from time to time if necessary because of their medical condition.

Whether an employee will be entitled to leave will depend on the facts of the particular situation.

People who believe they have a medical disability and think they could benefit from temporary unpaid leave should speak to their union representative, or call McCroskey Law Offices for a free consultation.

Attorney Thomas B. Cochrane specializes in labor relations law.

The EEOC recently released a detailed policy guidance on reasonable accommodation and undue hardship under the ADA. The guidance provides suggestions and instructions on how employees or their representatives, including labor unions, can seek accommodation at work. Copies of the guidance on reasonable accommodation are available at the EEOC's website, http://www.access.gpo.gov/eeoc/docs.accommodation.html

Without a union, workers can be fired at any time

A union is almost your only protection against unjust discharge

by John P. Halloran and Thomas B. Cochrane

Most employees believe their employer can only discipline or fire them for a good reason. People call us almost daily saying they were fired unfairly, and want to sue to get their job back. In almost every case, however, we have to tell them there is nothing we can do.

In Michigan, almost all employees work at-will, unless they belong to a union. At-will means the employee can be fired at any time, for any reason, or even for no reason. The employee is subject to the *will* of the employer.

Almost the only exceptions to this rule are when an employer fires someone for a reason that Congress or the state legislature has specifically made illegal. For example, an employer may not fire someone because of their race or gender, because there are laws which say race and gender discrimination are illegal.

The Michigan Supreme Court has reaffirmed that the vast majority of employees are presumed to be employed at-will. In *Schippers v. SPX*, decided in 1993, the Court showed how far it was willing to go to find that the surrounding circumstances do not create a just-cause employment relationship.

In *Schippers*, the employee was told that unless he did something seriously wrong, he could keep his job until retirement. He checked this out with three management people, including his immediate boss. Also, the plant manager testified that it was custom and practice only to fire an employee for just cause.

The Court found these reasons insufficient, and refused to return Schippers to his job or award him damages.

The Court said it would find the employee had a just-cause employment relationship *only* when the oral statements or the company writings clearly and unequivocally establish just-cause employment. The problem is, it is very easy for a defendant employer to disavow any statements it makes. Any employee relying on the employer's oral statements had better have the statements made in front of a minister, rabbi, or imam.

Most Company writings, usually the company handbooks, contain statements that the company can change policies at any time, that they do not establish a contract, or that the company does not intend to be bound by the writing.

Such words of disclaimer will probably be found by the courts to be sufficient to protect the employer, and result in the employee's case being dismissed.

One of the most valuable services a union performs for its members--some people may say the *most* valuable service--is protecting employees from being unjustly discharged.

A union contract contains a provision saying employees can only be fired for just cause. If an employee is fired unfairly, the union can protest the firing on the grounds that it violates the contract, and get the employees' job back.

Without a union contract, employees are virtually unprotected against the whims of their employer. There is nothing they can do if they are fired unfairly -- except file for unemployment compensation.

Attorney John P. Halloran specializes in employment discrimination, automobile accidents, and workers' compensation.

Attorney Thomas B. Cochrane specializes in labor relations law.

Workers Comp unfair to older workers

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full workers compensation benefits *and* old age social security benefits at age 65.

It is hard to think of a good reason why a worker injured before age 65 should not be able to collect a full workers compensation benefit, and full old-age Social Security benefits.

This seems less than fair, but the Michigan Supreme Court has upheld the law as constitutional.

The real rub comes when a person has retired before age 65, then returns to work and is injured.

It is impossible to think of any reason why that person, who was usually not drawing full old-age Social Security benefits while working, should be treated differently than other injured workers simply because of age.

This issue, involving a 5% loss of benefits for each year past age 65 for persons injured after 65, has not been squarely presented to the Michigan Supreme Court.

Of course, the court is currently dominated by Republican Justices, so it is possible some rationale will be found to support a full reduction in benefits.

But this situation is so patently unfair that there is some reason to think that any judge, no matter how conservative, might see this as an impermissibly discriminatory statute under the constitution's equal protection clause.

Presently there are some cases presenting this issue which may be heading for the Michigan Supreme Court.

If you fall into this classification, in other words, if you were injured after age 65, and you are not receiving a full workers compensation benefit, you should talk with your attorney and determine whether you should file a claim for full benefits.

Attorney J. Walter Brock specializes in workers compensation, asbestos litigation, social security, personal injury, and machine injury accidents.

Average expenses rising for American households

The Associated Press reports that American Express estimates the cost of groceries, gasoline, utilities, insurance, health care, and other day-to-day items will amount to more than $26,000 for a typical household in 1999.

AmEx surveyed over 800 consumers and found sharp increases in the price of insurance, fast-food, subscriptions, and high-tech services like cell phones and pagers.

AMC executive contrasts corporations with unions

In a recent interview with National Public Radio, Gerald Meyers, the former CEO of the American Motors Corporation, opined the union is "a political organization" and is "democratic in its foundations."

By constrast, Meyers explained that "the company is a command and control situation." Orders are given, he said, and corporate employees follow them.

For more information...

If you would like more information about anything in this newsletter, or if you have a question about any legal problem, call the law offices of McCroskey, Feldman, Cochrane, and Brock, P.C., for a free consultation.

The McCroskey law firm specializes in many kinds of law, including:

- automobile accidents
- serious personal injury
- workers' compensation
- social security
- employment law
- labor relations
- defective products
- environmental law

McCroskey, Feldman, Cochrane, and Brock, P.C. has four offices in western Michigan. Call any office direct, or dial (800) 442-0237.

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Additional copies of this newsletter may be obtained free of charge by contacting the McCroskey law firm.

"Paycheck protection" is an attack on organized labor

by Rep. Mark H. Schauer

Pending anti-union legislation in the Michigan Senate, backed by Republican majorities the House (58-52) and Senate (21-15), constitute major threats to organized labor. The vehicle for these attacks is commonly referred to as "paycheck protection."

Many so-called "paycheck protection" measures originate with the National Right to Work Foundation. The Foundation is a right-wing organization lobbying for conservative business interests. The Foundation achieved notoriety in the late 1980s when it assisted and financed the plaintiff in the U.S. Supreme Court decision *Communication Workers of America v. Beck*.

The issue of "paycheck protection" has now begun to surface in Michigan. Currently, GOP lawmakers have two bills pending on the issue.

Senator Bill Schuette (R-Midland) has introduced *Senate Bill 32, which would* require unions to annually notify their members of their rights under the *Beck* decision and acquire their written authorization before deducting dues and using that money for political purposes. SB 32 has been referred to the Senate Committee on Government Operations, where it currently remains.

Senator David Jaye (R-Washington Township) introduced *Senate Bill 322*, which flatly prohibits any state tax dollars from going to public employee labor organizations for labor organization activities, including collective bargaining, litigation, charitable activities, or anything providing benefit to the labor organization or its members. SB 322 has been referred to the Senate Committee on Human Resources Labor, Senior Citizens and Veteran's Affairs, where it currently remains.

The House Committee on Employment Relations, Training and Safety Committee held an "informational" meeting about paycheck protection on March 24, 1999. The meeting was dominated by anti-union speakers.

If "paycheck protection" legislation becomes law, it would require unions to obtain written permission from their membership *every year* before spending any money on politics, thereby, creating a logistical nightmare.

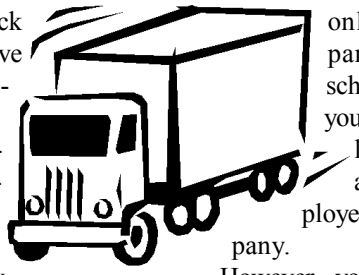
This type of legislation would also impose unfair and onerous bureaucratic procedures on labor unions, while leaving alone corporate money. Corporations currently outspend unions by a ratio of 11 to 1 in the political arena.

In reality, the intent behind "paycheck protection" legislation is to weaken unions by impairing their ability to communicate effectively about issues and candidates with their membership. I will vigorously oppose silencing the voice of working families in America.

Mark Schauer is the state representative for the 62nd District, which includes Battle Creek. Rep. Schauer can be reached at (888) 962-MARK. His address is Room 318, Roosevelt Bldg., State Capitol, Lansing, MI 48913. E-mail: schauer@house.state.mi.us

Independent truckers need workers comp insurance

by J. Walter Brock



If you are driving a truck you should be sure you have workers compensation insurance coverage.

Recently, some trucking firms have been attempting to avoid the purchase of workers compensation insurance by making their drivers "independent contractors." If you own your rig, you schedule your own loads, and you work for a variety of companies, you may well be an independent contractor and not an employee of any one company.

This means you must purchase your own workers compensation insurance. Be sure you have done so if you truly are an independent.

If, on the other hand, you work for only one trucking company, and the company schedules your loads, and you have that company's logo on your truck, you are probably an employee of that trucking company.

However, you should make certain the trucking company is buying workers compensation insurance for you.

If not, expect a lot of litigation in the event you are injured on the job.

Be careful out there, and, as always, call our office if you have any questions.

Attorney J. Walter Brock specializes in workers compensation, asbestos litigation, social security, personal injury, and machine injury accidents.

New ADA guidance released on reasonable accommodation

The EEOC recently released a detailed policy guidance on reasonable accommodation and undue hardship under the Americans with Disablilities Act.

The guidance sets out the EEOC's position on what employers have to do to accommodate the needs of disabled employees and job applicants.

It presents a wide range of common concerns and examples in a question-and-answer format and provides suggestions and instructions on how employees or their representatives, including labor unions, can seek accommodation at work.

EEOC guidances do not have the force of law, but are given deference by the courts.

Accommodation must be provided to qualified employees "regardless of whether they work part-time or full-time, or are considered probationary," the EEOC said.

The guidance gives the EEOC's interpretation on a wide range of "possible reasonable accommodations that an employer may have to provide," making existing facilities accessible, modifying or restructuring a job, or changing policies on reassignment to a vacant job.

The EEOC noted that employers are not necessarily required to provide the accommodation the individual wants.

"The employer may choose among reasonable accommodations as long as the chosen accommodation is effective," the EEOC said.

Thus, the employer can offer alternative suggestions for reasonable accommodations and discuss their effectiveness in assisting the individual with a disability.

If there are two possible reasonable accommodations, and one costs more or is more burdensome than the other, the employer may choose the less expensive or burdensome accommodation as long as it is effective, the EEOC explained.

Individual employees can discuss potential accommodations with their employer on their own, or they may be assisted by their labor union.

The only limitation to the employer's obligation is if accommodation would cause an "undue hardship" on the employer.

Determinations of whether an accommodation will impose an undue hardship on an employer will be made on a case-by-case basis.

Contact McCroskey Law offices if you have any questions about the ADA.

Copies of the guidance on reasonable accommodation are available at the EEOC's website, http://www.access.gpo.gov/eeoc/docs.accommodation.html

Supreme Court forbids male-on-male sexual harassment

Case expands the reach of Title VII anti-discrimination laws

By Thomas B. Cochrane

The United States Supreme Court recently decided *Oncale v. Sundowner Offshore Services*, which expands the reach of existing sexual discrimination laws, while at same time signaling the Court's concern that discrimination must be judged by the context in which it occurs.

The Plaintiff in the case, Joseph Oncale, filed a complaint against his employer, Sundowner Offshore, claiming he was sexually harassed by male coworkers in his workplace.

The only question decided by the Court was whether Title VII of the Civil Rights Act of 1964 prohibits same-sex harassment claims.

Title VII is the main federal law prohibiting sexual discrimination, and the Courts have long-held that the law prohibits discrimination against a woman by a man, and discrimination by a man against a man to benefit a women.

In *Oncale* the Court unanimously held that same-sex harassment is prohibited by Title VII just like other forms of sexual harassment.

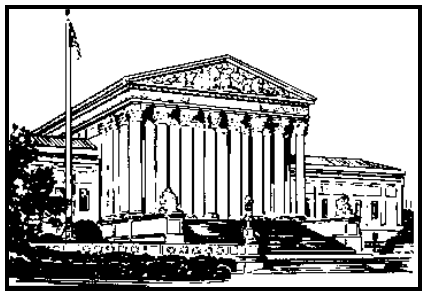
This decision is an expansion of existing law and can be viewed as being favorable to employees. Mr. Oncale now has the right to take action against his employer, whereas without this decision some courts would have dismissed his suit.

What the Court gives with one hand, however, it takes away with the other. The Court's opinion was drafted by Associate Justice Antonin Scalia, nearly the most conservative member of the court.

Portions of Justice Scalia's opinion provide a glimpse into the mind of the Court, indicating how it may rule in future cases.

The Court said sexual harassment depends on the context in which it occurs.

Justice Scalia wrote that "workplace harassment, even harassment between



men and women, is not automatically discrimination merely because the words used have sexual content or connotations. The critical issue is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed."

"Harassing conduct," he wrote, "need not be motivated by sexual desire to support an inference of discrimination on the basis of sex."

In any discrimination suit, the plaintiff must show "the conduct at issue was not merely tinged with offensive sexual connotations, but actually constituted discrimination *because of* sex."

Title VII, said Justice Scalia, does not outlaw sexuality in the workplace, such as male-on-male horseplay or intersexual flirtation.

There is a difference between "innocuous" interaction between people of the same sex and of different sexes, and prohibited sexual discrimination.

The law prohibits only behavior so objectively offensive as to alter the conditions of the victim's employment. Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment as judged by a reasonable person is not illegal.

Justice Scalia added that the "social context" must be taken into consideration. For example, a football player's working environment is not severely abusive if the coach smacks him on the buttocks as he heads onto the field -- even if the same smack delivered by the coach on his secretary's buttocks back at the office would be abusive.

"Common sense," he says, "and an appropriate sensitivity to social context, will enable [us] to distinguish between simple teasing or roughhousing between people, and conduct which a reasonable person would find severely hostile or abusive."

The language of the opinion may indicate the Court is going to be less sympathetic in the future to claims of harassment, and it is unclear for the moment how the law may develop.

McCroskey Law Offices advises unions and individuals to err on the side of caution when considering what conduct may be permissible under Title VII.

Until the Court clarifies the law more, rely on the old maxim "better to be safe than sorry." If the conduct in question could plausibly be viewed as sexual harassment, take it seriously, and treat it as if is illegal harassment, at least until you can get legal advice.

Attorney Thomas B. Cochrane practices employment law, labor relations and workers compensation.

Employers required by law to share information

by Thomas B. Cochrane

Unions are legally entitled to receive information from employers if the information is needed to carry out their duties as employees' representatives.

The National Labor Relations Act requires an employer to furnish information requested by a union "if there is a probability that the information is relevant and necessary to the union in carrying out its statutory duties and responsibilities as the employees' bargaining representative."

Those duties and responsibilities include contract negotiations, and the filing and processing of grievances.

The employer does not have to supply information that is not relevant to the union's representation duties, but the standard for assessing relevance is very broad.

According to the National Labor Relations Board, information relating to the terms and conditions of employment, or the merits of a grievance or potential grievance is clearly relevant, and must be provided.

The information, however, does not need to be so relevant that it would resolve the grievance. The Board says the union is entitled to information even if it is only investigationg to see if a grievance should be filed.

When the union requests information about matters occurring outside the bargaining unit, the standard is somewhat narrower.

Subcontracting, for example, is an "outside" issue. In such cases, says the Board, the union should be prepared to offer a "more precise" explanation as to why it needs the requested inforamation.

Where the information is plainly irrelevant to any dispute, the employer is not required to provide it.

If an employer refuses to comply with a request for information, the union can file unfair labor practice charges with the NLRB.

A union should not expect to compel an employer to release information through the arbitration process.

There one important exception to the rule that a union may obtain relevant information. A union is not entitled to "witness statements" taken by the employer.

The NLRB tends to interpret "witness statements" narrowly, however, so this exception has limited effect.

In any case, when investigating a event in the workplace, a union is is free to collect witness statements on its own.

Attorney Thomas B. Cochrane specializes in labor relations law.

How to request information

When making an information request, ask yourself what you want to know, and why. When you have this clearly in mind, try writing out a description of what you want.

Be as specific as you can, and have a union brother or sister to read your description and ask if they understand it.

When you are satisfied with your draft, write your request on official union letterhead. Make a simple statement that the union needs certain information.

For example, you may say "The Union requests the Company provide it with the following information:" At this point, insert the draft you prepared with the help of your union colleague.

Conclude the request with a statement like: "The Union needs this information to carry out its statutory duties as collective bargaining representive. Please respond in writing as soon as possible."

The request is being made on behalf of the union, so make sure the statement is signed by a union officer. Individual union members do not have the right to request information from the Company in this way.

If you have any questions about filing an information request, contact McCroskey Law Offices.

Mandatory urine tests can violate the ADA

The Second Circuit Court of Appeals ruled recently that an employer violated the Americans with Disabilities Act when it discharged employees who could not participate in a urine screen drug test because of bladder problems.

The company did not fire any employees with healthy bladders who were able to give a urine sample.

The employer's testing policy treats employees with bladder problems who are also recovering drug addicts differently from employees who have bladder problems but are not recovering addicts.

The employer required recovering addicts to take a drug test once a month, but only required employees without a record of addiction to take a test once every five years.

This is disciminatory because recovering addicts who cannot provide a urine sample will be discharged after one month, whereas any other employee unable to provide a sample would only be fired after five years.

Buckley v. Consolidated Edison Co. of N.Y., 7 Am. Disabilities Cas. (BNA) 794 (2d Cir. 10/8/87). *Reported in* 156 L.R.R.M. (BNA) 322.

Include statement that Spanish language service is available.

Also a cut-out form for ordering newsletter, and announcement of FMLA pocket guide.

Videotaping union rally is an unfair labor practice says Labor Board

In a recent case, the National Labor Relations Board ruled the employer violated the National Labor Relations Act by videotaping union activity.

The employer and union had a long-running dispute and the employer unilaterally implemented its final offer. The union responded by holding a number of rallies in front of one of the employer's gates.

The employer had security cameras on its property, but mounted a new video camera atop a nearby building to tape the rallies. It also gave its employee relations director a camera to use from a nearby guard shack.

The NLRB ordered the employer to cease using (or pretending to use) a video camera to monitor protected activities, and the Court of Appeals for the District of Columbia enforced the order.

The Board said the employer's actions could intimidate employees. The employer's normal security cameras already covered the gate, so the added security provided by the new camera was minimal compared to the coercive effect it could have on the employees.

In addition, the employer lacked a reasonable and objective expectation that employee misconduct at the rallies was likely. The videotaping continued long after the employer concluded that "nothing was going on" at the rallies.

National Steel & Shipbuilding v. NLRB, 159 LRRM 2387, (DC Cir 1998).

Corporate income tax

rose about 13% in 1994 to $135.5 billion according to the IRS. Total corporate taxes account for only 12.5% of the total amount of taxes taken in by the federal government. In the 1960s corporate taxes accounted for more than 20%.

Older workers have edge over the young

The conventional wisdom in our modern, high-tech economy is that older workers are less desirable than younger workers. A February 1999 cover story in *Fortune*, for example, declared that workers are "finished at 40."

Recent research, however, says older workers are not undesirable at all.

Experience counts more than youth in most supervisory fields, according to a new study conducted by the Cranfield School of Management in the United Kingdom.

Younger managers are sometimes more energetic and dynamic, but older managers are generally better in businesses which depend on repeat customers and high employee morale.

Another problem is that younger managers may not be as committed to the employer as older workers, who may be more inclined to take into consideration the long-term health of the employer. Younger workers have the option of leaving a failing company and looking for employment elsewhere.

According to a 1998 study conducted by the American Association of Retired Persons, employers realize older workers have many desirable skills such as sound judgment and a solid work ethic. They also excel in people skills and are better able to work in a team environment.

Employers also feel older workers are more reliable and more committed to their jobs.

America's tight labor market may also be a factor leading to increased reliance on older workers. The AARP study, for example, says employers generally feel older workers are also less flexible than younger workers, less accepting of change, and less comfortable with computers.

Reported on National Public Radio, Morning Edition, March 10, 1999.

Chainsaw Al's luck runs out

Albert J. Dunlap, also known as "Chainsay Al," eliminated thousands of jobs from the company's he's worked for, and earned himself a reputation as one of the countys meanest executives.

In 1998, however, he found himself on the receiving end of a pink slip, when Sunbeam Corp. fired him.

Dunlap said being fired left him "personally, financially and professionally devastated."

"I believed in Sunbeam." he added. "I belived passionately in the company."

Dunlap was angry about the way he was let go. He said Sunbeam didn't give him a reason.

"My major goal in life right now is to restore my good name and integrity," he explained. "I think I've been horribly impugned."

Reported by the Wall Street Journal.

GOP's Lamar Alexander says unions too powerful

According to Republican Presidential hopeful Lamar Alexander, "Clinton Democrats have quietly made it easier for union leaders and harder for small businesses trying to grow new jobs.

"First," says Alexander, "the Hatch Act was amended to give government employee unions enormous new power like teacher's unions.

"Second they are working hard to make it illegal to hire replacements for workers who strike illegally.

"Third, they want to repeal section 14B of the Taft-Hartley Act, which allows states to pass right-to-work laws."

According to Alexander, this will result in "no new jobs and no growth in the standard of living for American workers."

Reported in Lamar Alexander: On the Issues <http://www.newstown.com/AmeryNet/polysnet/polyforms/chp2.htm#chp.two>

Woman are joining unions faster than men

According to a 1998 AFL-CIO study, women are now more likely than men to join labor unions.

The poll of 2,036 nonunion workers shows that 49% of women would like to join a union. The poll found that only 40% of men would like to join.

I'd rather have a hot poker in my eye than have an airport named after him.

—Randy Swartz of the National Air Traffic Controllers Association on the renaming of Washington D.C.'s National Airport to Ronald Reagan Washington National Airport.

Reported by Newsweek.