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 8, Number 2 September 2000

Supreme Court repairs workers compensation

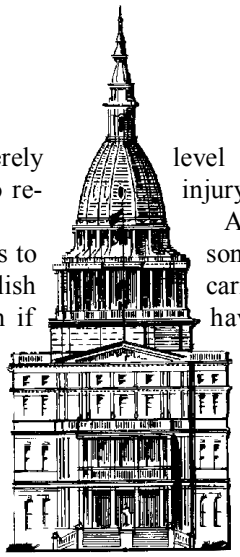
Court removes limitations placed on workers comp statute by Republican lawmakers

The Michigan Supreme Court has recently decided three important cases involving the establishment of a new wage earning capacity based upon a return to work following a work related injury: *Russell v. Whirlpool Financial Corp.*, 461 Mich. 579 (2000); *McJunkin v. Cellasto Plastic Co.*, 461 Mich. 590 (2000); *Perez v. Keeler Brass Co.*, 461 Mich. 602 (2000).

These cases undo the effect of Republican legislation which amended the Workers Compensation Act to severely limit benefits to those persons who return to work after an injury.

The amendments denied benefits to those persons who are able to establish a new wage earning capacity, even if they remained disabled.

For example, persons with a serious back injury and surgery might be able to return to light work and, by learning new skills, bring their wages back to the same level as it was before their injury.



At that point in the persons' recovery insurance carriers argue the workers have established a new wage earning capacity and no longer have the right to receive weekly workers compensation wage loss benefits if they go off work again for the same injury.

This reading of the law obviously is a discourages people from going back to work.

Also, it is patently unfair to persons who do return to work, and then, for reasons beyond their control, lose their jobs and cannot get another job due to their old injuries.

For instance, if the economy were to slow down, causing employers to layoff employees, those persons who have a lifting and bending restriction due to an old back injury might be the first to be let go, especially if they are performing light duty work.

Laid-off workers may find they are not able to compete in the job market

continued at the middle of page 4

Employers defraud workers compensation system

Contrary to popular belief, employee fraud not a problem

All too often discussion on fraud within the workers compensation system focuses on workers. What about employers who try to defraud the system, and, as a result, cause further harm to injured workers?

Sensationalistic news reports would have people believe that fraudulent workers comp claims filed by injured workers are rampant, there is no rela evidence of a widespread problem.

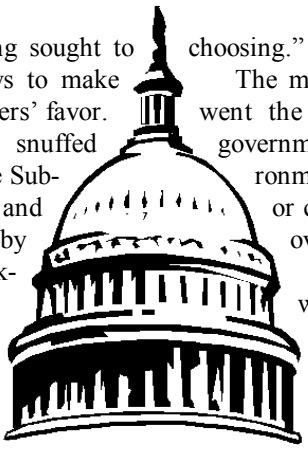
In fact, states which spent significant resources investigating employee fraud found relatively few cases.

On the other hand, premium fraud by employers--such as paying workers off-the-books, underreporting payroll, misclassifying a work category, improperly describing workers as independent contractors--is draining millions of dollars from state workers compensation systems.

Reported at <www.laborresearch.org.>

Hoekstra heads Republican anti-union effort in Congress

GOP's 'American Worker Project' wipes out hopes for labor law reform



Labor leaders have long sought to rework existing labor laws to make them less biased in employers' favor.

Their hopes have been snuffed out, however, by the House Subcommittee on Oversight and Investigations, chaired by Representative Peter Hoekstra of west Michigan.

Just a few short years ago there was some hope for reform.

Shortly after coming into office, President Clinton appointed the Commission on the Future of Worker-Management Relations to look at the state of labor relations. Harvard professor and former labor secretary John Dunlop chaired the commission, which issued its report in 1995.

Its findings, including the recommendation for a more hospitable environment for labor organizing, could not have come at a less favorable time.

Congress had just been taken over by the Republican party for the first time in 40 years and, predictably, the report was promptly shelved.

Then the Republican Congress directed the Subcommittee on Oversight and Investigations of the House Committee on Education and the Workforce to preprare its own report.

The subcommittee was chaired by Rep. Hoekstra.

The Republian report came out in the summer of 1999: "American Worker Project: Securing the Future of America's Working Families."

The differences between the two are stark reports. The earlier Democratic-flavored one, for example, saw a need to "modernize labor law for workers on whether or not to join a union of their choosing."

The more recent Republican one went the other way: "The federal government must create an environment conducive to business, or companies and jobs will go overseas."

The Dunlop Commission wanted the National Labor Relations Act changed to curtail management muscle used to prevent organizing.

Hoekstra's committee report calls for an end to the same "Depression-era workplace laws" on the grounds that they hamper American industry.

Dunlop rejects the GOP's analysis of the law, saying it is simplistic and shallow.

"The Constitution is the same today as it was long ago. What kind of argument is that?" says Dunlop.

"Social Security was enacted in 1935. Are you telling me that it's irrelevant? The unemployment insurance scheme was devised in '35. It is irrelevant? Arguments of substance need to be put into these issues."

Dunlop argues that corporations have become more and more brazen in violating labor laws to break unions.

Employers have realized that they can simply fire employees instrumental in any organizing effort. The only penalty the companies face, should the NLRB rule against them, is back pay to the employee.

By comparison, targeted employees must endure loss of their livelihoods and the prospect of financial destitution.

Employers were emboldened when President Ronald Reagan fired 11,000 striking air traffic controllers in 1981. Though the strike was clearly illegal, its symbolic impact was significant. Strikes now are very rare. Unions have virtually lost that trump card.

Excerpted from The American Bar Association Journal*, April 2000.*

FMLA advice

By Thomas B. Cochrane

Employers may not refuse to return the injured to work

Requiring injured employees to be 100% healed violates the ADA

By Thomas B. Cochrane

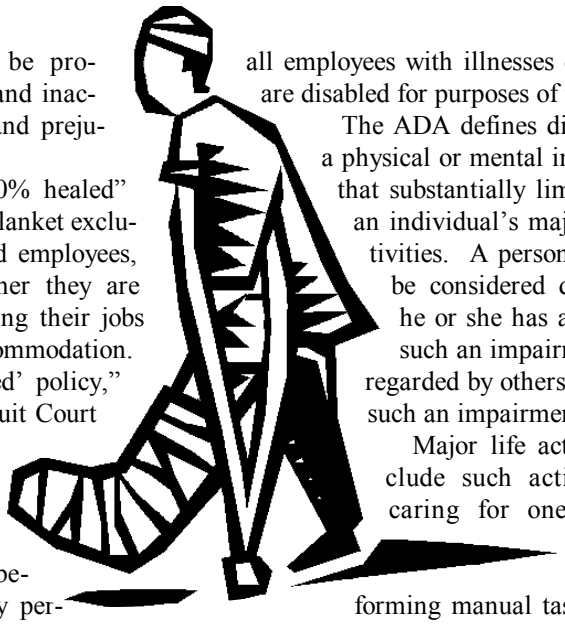
When employees become sick or injured, they are often told by their employers that they may not return to work until they are completely healed and able to work without any restrictions.

According to several recent federal court cases, however, such "100% healed" policies are *per se* violations of the Americans with Disabilities Act.

The ADA forbids employment discrimination against persons with disabilities who can otherwise perform their jobs.

Employees who cannot perform their jobs because of a disability must be given accommodations enabling them to work, provided the accommodations are not overly burdensome.

The ADA stresses the importance of evaluating each individual employee's abilities on a case-by-case basis. According to a federal district court in Oklahoma, "individualized assessment is absolutely necessary if persons with disabilities are to be protected from unfair and inaccurate stereotypes and prejudices."



Employers' "100% healed" policies amount to blanket exclusions of all disabled employees, regardless of whether they are capable of performing their jobs with or without accommodation.

"A '100% healed' policy," says the Ninth Circuit Court of Appeals, "discriminates against qualified individuals with disabilities because such a policy permits employers to substitute a determination of whether a qualified individual is '100% healed' for the required individual assessment whether the individual is able to perform the essential functions of his or her job either with or without accommodations."

The Seventh Circuit Court of Appeals explains that the ADA regulations "expressly forbid an employer to use qualification standards, employment tests or other selection criteria that screen out or tend to screen out a class of individuals with disabilities, on the basis of disability, unless the standard, test, or criteria is shown to be job-related and is consistent with business necessity.

"The purpose of this provision is to ensure that individuals with disabilities are not excluded from job opportunities unless they are actually unable to do the job."

It is important to note that not all employees with illnesses or injuries are disabled for purposes of the ADA.

The ADA defines disability as a physical or mental impairment that substantially limits one of an individual's major life activities. A person may also be considered disabled if he or she has a record of such an impairment, or is regarded by others as having such an impairment.

Major life activities include such activities as: caring for oneself; performing manual tasks; learning, thinking, concentrating, interacting with others, walking, seeing, hearing, speaking, breathing, working, and caring for one's children.

Unless an employee has an ADA disability, he or she may not be able to invoke the law when prevented from returning to work by an employer's "100% healed" policy.

A union, however, probably would not be similarly restrained, and could argue through the contractual grievance procedure that an employer's policy is *per se* illegal, regardless of whether any of its members were disabled at the time.

Anyone who thinks they are being subjected to an illegal "100% healed" policy should contact their union steward, or call our law firm for a consultation.

Attorney Thomas B. Cochrane specializes in union labor law and labor-management relations.

The law on "100% healed" policies is still evolving

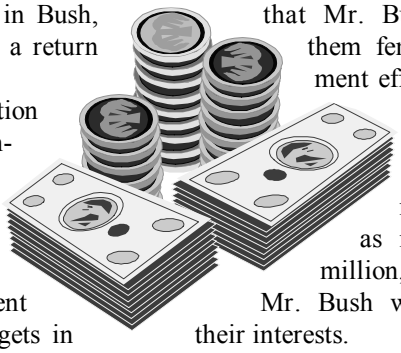
Employers' "100% healed" policies have been struck down by the Seventh and Ninth Circuit Courts of Appeal, which cover, respectively, Wisconsin, Illinois, and Indiana, and Washington, Montana, Oregon, Idaho, Nevada, California, Alaska, and Hawaii. Such policies have also been invalidated by federal district courts in Iowa, Pennsylvania, Minnesota, and Kansas. The Sixth Circuit Court of Appeals, of which Michigan is part, has not yet ruled on this issue, although there is a substantial likelihood the it will agree with the Seventh and Ninth Circuits when it does.

Bush's donors expect results for their money

Be afraid. Be very afraid.

In a recent article, the *Wall Street Journal* referred to George W. Bush's contributors as "shareholders in Bush, Inc.," saying that they expect a return on their investment.

Bush's $93.2 million election fund makes his the richest campaign ever.



Chemical executives have contributed $480,465 to the cause. They'll be urging Mr. Bush to ease up on enforcement of environmental rules if he gets in office.

Pharmaceutical manufacturers gave almost as much, $385,315, in hopes that Mr. Bush will help them fend off government efforts to control drug prices.

Oil and gas companies have given as much as $1.5 million, in hopes that Mr. Bush will look after their interests.

Mr. Bush has built a record as a business-friendly environmental regulator during his tenure as Texas governor, fighting clean-air legislation to allow heavily polluting industries to "voluntarily" reduce emissions.

Mr. Bush's take is much larger than Mr. Gore's, 20% of which consists of federal funds which Gore earned by limiting the amount he raised from individuals.

Mr. Gore, endorsed by the Sierra Club and expressing strong views in his book *Earth in the Balance*, is the industry's nightmare.

Supreme Court cases protect employees receiving workers compensation

continued from the bottom of page 1

against younger workers.

Insurance companies and their Republican allies would like simply to throw these people out like an old shoe. These aging, partially disabled workers will be forced to rely upon welfare—to that extent that Governor Engler has not dismantled it.

Three cases arising under the law amended by the Republicans reached the Michigan Supreme Court last year.

In deciding them, the Court read the Act literally and held that those persons with a partial disability who return to work for less than 100 weeks have not established a new wage earning capacity, and would be entitled to further weekly workers compensation wage loss benefits.

This is true even if they lose their job due to another illness or injury, or are fired for misconduct.

Beware! The Republican legislature may step in again and amend the statute to nullify the effect of these three decisions.

Even if the legislature does not, expect that many employers will put injured workers back to work and wait out the 100 week period, and then start looking for an excuse to fire the employees to defeat any future workers compensation claims.

After 100 weeks of light work there is little protection for injured workers unless they work for a unionized employer. A union can help protect employees from being discharged unjustly. If you are partially disabled and still working under restrictions it is a good idea to call an attorney and discuss your situation. There is no sure means of protecting yourself, but at least your attorney can give you some advice which might be helpful so that your future welfare and that of you family is not jeopardized.

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

Michigan third in neglecting environment laws

One third of the nation's major air polluters have not been inspected in the last three years, according to a report issued in July by the Environmental Working Group.

The report says Ohio, Michigan, and Texas lead the country in failure to inspect factories with records of clean air and water violations.

Environmental officials in all three states strongly disputed the data used in the report. The authors of the report, however, said the data came from EPA records that were submitted by the states themselves.

Reported by the Associated Press.

Employers not to blame for higher health care costs

Employers say their health-care costs will rise 9.7% in 2000, up from 7.5% in both 1999 and 1998, according to a study reported in the *Wall Street Journal*. The study adds that health-care providers like hospitals say their fees will rise only 3%.

The reserachers say the disparity is due to more use of services; drug costs; and a move by insurers to improve their bottom lines by passing on costs to employers, rather than absorbing them to gain market share.

The study says 70% of employers plan to pass at least some of the costs on to employees.

Supreme Court justices up for election on November 7

Takeover of state government by GOP is almost complete

The Republicans have captured all three branches of our state government. The legislature continues to pass laws which hurt workers, ordinary people, and the environment as long as they remain in control. The governor's office does the same.

Depending on the outcome of the November election, the courts may continue to help the other two branches of government dismantle citizens' rights while simultaneously strengthening corporations' power.

In this supposedly non-partisan Supreme Court election, there are three seats on the judicial bench up for grabs. Each of the three incumbents is a Republican. Each has a record of being strongly pro-business. anti-worker, and anti-environment.

It isn't even necessary to remember their names. *Simply vote against each of the three incumbent Republican Supreme Court justices, and vote for their opponents.* Please remember to tell all your co-workers, family and friends.

The state's anti-worker forces may soon be unstoppable

This may be our last chance for decades to stop the pro-business, anti-worker, anti-environment justices on the Supreme Court.

Michigan's electoral districts will be redrawn next year. If, as usually happens, the legislature is unable to agree on a redistricting plan, the job will pass to the Supreme Court.

If it is held by a Republican majority, the GOP will be able to implement a plan remaking the districts in their favor, strengthening their hold on the legislature.

Democrats would be isolated in a relative handful of districts, consigned to minority status.

The scariest part about redistricting is its potential for making the strongest party even stronger.

If the Republicans come out on top in a redistricting battle, they will be able to take steps to ensure that they remain in control—possibly for decades to come.

Vote against the three incumbent Supreme Court justices

Vote for their opponents

cut out and post on your union bulletin board

Serious injuries result from chemical plant explosion

The McCroskey law firm has been hired to represent four workers who were severely injured in a chemical explosion at Lomac Chemical Plant in Muskegon on April 12, 2000.

The four workers are able to bring legal action against Lomac because they worked for an independent contractor hired by Lomac to do some work at its facility. They were not Lomac employees themselves.

Normally, a worker cannot sue his or her own employer, and, indeed, the Lomac workers injured in the explosion are only entitled to medical treatment and weekly workers compensation benefits, regardless how grievous their injuries are and regardless how negligent Lomac was. This has been the law since the mid-1980s, when Republican legislators and Governor Engler rewrote Michigan's workers compensation statute to protect Michigan businesses from workers' lawsuits.

The explosion leveled everything in the vicinity of the four workers, and blasted debris in radius a mile wide.

Initially, the four men were left alone and had to render first aid to each other. Emergency personal arriving on the scene knew Lomac stored many dangerous substances, and could not enter the wreckage until they had assessed the risks and equipped themselves with chemical protection gear.

All the men sustained shrapnel injuries and most have burst ear drums. One man was buried alive.

An investigation is under way to find out why these four men and the Lomac employees were knowingly exposed to unacceptable safety risks at Lomac. Lomac and the previous corporate owners of the chemical plant have left a legacy of environmental contamination, workers sick and dying of bladder cancer, and multiple chemical accidents, and the law firm has brought legal action against plant many, many times.

When workers and unions ask us about why it is important wrest control of our state and national governments from the Republican Party, we only need point to cases like the Lomac chemical explosion. This is what happens when the Republicans tell us they will "get government off our backs." Workplace safety laws aren't enforced, workers' benefits are slashed, and environmental agencies are politically manipulated to look the other way.

The four workers' cases are being handled by attorneys Bob Chessman and Eric Lewis.

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.

Toxic gas kills tank truck driver at Whitehall tannery

McCroskey firm represents widow and children in lawsuit

At 7:00 am on June 4, 1999, a long time tank truck driver of hazardous chemicals arrived at Whitehall Leather Company with a load of sodium hydrosulfide. He had no idea what he was walking into.

Genesco Corporation had not trained its third shift foreman how to handle tanker truck shipments. It had not installed vents on its inside chemical storage tanks. It had not installed recommended H2S monitors, despite the known risk of H2S gas production from these chemicals. It had not adopted any reliable policy for plant wide warning of chemical emergency. It had not used even a primitive lock-out system on chemical storage tanks and pipes.

As the result, this tanker driver from Kentucky was directed to the wrong loading port. His shipping papers, however, were signed by the Genesco foreman to certify that the tanker was hooked to the correct port.

The foreman then left the driver alone to unload. He unknowingly unloaded into an interior storage tank containing acid, which caused rapid production of toxic hydrogen sulfide gas. The driver knew something was wrong and shut down the emergency valve on his truck and then entered the dark, windowless plant.

Why did he go into the plant? It is possible he entered the plant to warn Genesco employees of the danger. Maybe he was trying to get help. No one will ever know. Shortly after he entered the Whitehall Leather, he was overcome by H2S gas, lapsed into unconsciousness, and died.

The law firm has been asked to represent the man's wife and children, and suit has been filed against Genesco by attorney Eric Lewis.

Employee sues Grand Rapids corporation in Whistleblower case

By Eric C. Lewis

The law firm recently filed suit against McDonalds Industrial Products in Grand Rapids on behalf of a client who lost his maintenance manager position there after filing a complaint with the Department of Environmental Quality about repeated illegal diversion of oil and other wastes into the City sewer system.

The suit was filed under the Whistleblower's statute, which protects employees who report illegal activites from employer retaliation.

The corporation was caught dumping into the sewer in 1997. It paid a fine and promised never to do it again.

The manager reported that the corporation was discharging precisely the same waste through precisely the same pipe as in 1997. The City of Grand Rapids imposed a large fine, which together with all the compliance costs may have totaled a million dollars or more.

The manager alleges alleges the corporation harassed him and eventually forced him out of his job.

The law firm has contacted the FBI to report possible violations of federal criminal statutes. Attorney Eric Lewis is representing the manager.

The Whistleblower's statute can provide needed protection to an employee who wants to report violations of the law, but fears the consequences of doing so. However, the statute of limitations under the Whistleblower's Act is only 90 days, so an employee has only three months from the last day he or she was subjected to adverse action by the employer to bring a claim in court.

Act quickly, and act wisely. Call the law firm for advice *before* reporting illegal activities.

If you have any questions about the whistleblower law, feel free to contact attorney Eric Lewis at the law firm's Muskegon office.

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.

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 Disabilities 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.

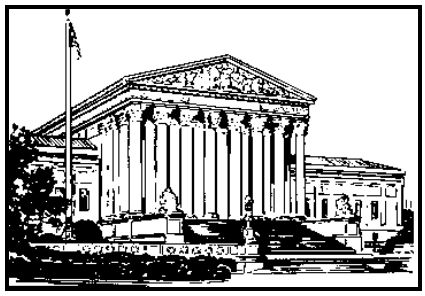
This decision is an expansion of existing law and can be viewed as being favorable to employees. Mr. Oncale now has the right to take action against his employer, whereas without this decision some courts would have dismissed his suit.

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.

Who really runs the economy?

Not the President. Not Congress. The most important decisions are made by "The Fed"

In the 2000 election year, we can expect to hear a lot of campaign rhetoric on who gets credit for the growing economy, and what party's policies are most likely to keep the good times rolling.

One of the most important players in the U.S. economy is rarely mentioned, however. Economists say the prosperity of the 1990s is primarily the result of the policies of the Federal Reserve bank.

"The Fed" has an enormous impact on the lives of all Americans It is in charge of the nation's monetary policy, which tries to make sure that dollars are plentiful enough so consumers and businesses can buy all of the goods and services produced by the economy.

That in turn affects how many people will have a job, whether prices will be stable and how many goods and services will be produced an sold.

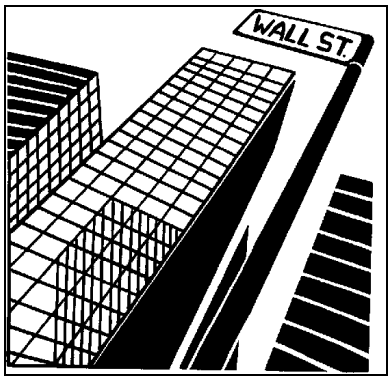
The Fed does not work directly on consumers or businesses but accomplishes its policy through banks. It manipulates the amount of funds that banks have available to lend, using the interest rate on funds that banks lend to each other as a guide.

When money is hard to obtain, loans become expensive and individuals and businesses don't spend. Businesses than produce fewer goods and services than they are capable of producing. They lay off workers and slow investments.

If production declines for many months, in a recession, many people can lose jobs.

Other times, money is easy to obtain, businesses spend freely, and lots of people have jobs.

If businesses are near the limit of their production capacity, however, any increase in the money supply means consumers will spend more dollars on the same amount of goods and services, driving up their cost. There are too many dollars available and too few goods to buy, and inflation results.



Monetary policy seeks to guide the economy between these extremes.

The Fed is alert for signs of recession or inflation, and sets monetary policy aimed at preventing both.

Policy is set by the Federal Open Market Committee. The committee is made up of officials from the nation's regional Federal Reserve banks. The FOMC is chaired by Alan Greenspan.

All chairman are appointed by the President.

Even though FOMC members are vast amounts of economic information available, policy decisions are often influenced by members' biases.

Many critics believe the Fed invariably errs on the side of fighting inflation, to the detriment of workers.

The Fed has made many errors. Fed policy was a major reason for the Great Depression of the 1930s and the intense inflation of the 1970s.

The Fed's power to make changes in the economy is limited. Monetary policy affects the environment in which peoples' economic decisions are made, but it cannot force anyone to respond. The money supply can be increased, but people still may not spend more. Credit can be made more expensive, but people may spend money freely anyway.

While it is far from all-powerful, the Fed is perhaps the nation's most important economic policy-making body, affecting the lives of every single American every day of their lives.

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%.

Salaries expected to rise 4 %

Salaries in most U.S. industries will grow an average of 4 percent again this year, and in 2001, according to a private economic survey released in July and reported by Reuters.

Production workers have fared worse. According to the Bureau of Labor Statistics, their average weekly pay increased 3.6 percent over the past 12 months, or about 1 percent when adjusted for inflation.

The survey predicts a 2.7 percent increase in inflation this year and next year.

<<employees discharged all the time>>

In my labor law practice I frequently see partially disabled employees discharged for little or no reason. Their unions and I are often able to get them back to work through a grievance and arbitration procedure.

Unfortunately, we are not always successful. If an employer can find an excuse to fire an injured employee, and can convince an arbitrator that the discharge was legitimate, and was not simply intended to lower its workers compensation costs, there is nothing the union and I can do except wish the employee better luck in his next job.

One common method employers use to discharge an injured employee is to make the employee take a drug test. Employers institute drug policies under which any employee injured at work must be drug tested, even if the employee's actions did not cause the injury. The employee is tested despite the fact that he would have been injured whether he was under the influence of drugs or not.

The employee can be fired if he has drug residue in his system, even if he was never under the influence at work, and the employer would not have to pay workers compensation benefits.

In one case I handled, the employee was walking past a coworker's work station when she was hit in the head with a wire basket the coworker threw in the air. The cut was bleeding, so she was sent to the emergency room, where she took a mandatory drug screen. When it came back positive, she was discharged.

Chainsaw Al's luck runs out

Albert J. Dunlap, also known as "Chainsaw 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.