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EMPLOYMENT LAW LETTER

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What's Inside

On HRHero.com

Workplace Violence

The recent shootings at a movie theater in Colorado serve as a somber reminder that violence can occur at any workplace. As an employer, you must do everything to ensure your employees have a safe place to work. At www.HRHero.com, you can find the following tools to help prevent such a tragedy from occurring at your workplace:

- HR Sample Policy—Weapons, www.HRHero.com/lc/policies/208.html
- HR Sample Policy—Violence in the Workplace, www.HRHero.com/lc/policies/209.html

EMPLOYER LIABILITY

Failure to investigate harassment complaint leads to unsexy outcomes

by Sara Sahni

The U.S. 11th Circuit Court of Appeals (whose rulings apply to all Georgia employers) recently addressed an employer's duty to conduct a prompt and scrupulous investigation once it becomes aware of employee misconduct. If you receive a sexual harassment complaint, you are obligated to exercise reasonable care to prevent and promptly correct further harassment, mainly by conducting a swift, impartial, and thorough internal investigation. Failure to do so may result in costly, drawn-out litigation that might otherwise have been avoided—and no conscientious, penny-wise employer wants that.

Background

Crystal Kurtts was a receptionist at a clinic operated by Chiropractic Strategies Group, Inc. (CSG). Shortly after she was hired, she received an unwanted flood of lewd and sexually suggestive text messages from her supervisor, a physician. In one jaw-dropping instance, the doctor sent her 64 text messages in the span of a mere 2½ hours. In his rampant, lascivious communications, he asked her to have sex with him in the office after business hours and told her that she would receive a better work schedule in exchange for "small favors." The harassment escalated when he cornered her in an empty office and another employee overheard her screams.

The next day, Kurtts reported the physician's behavior to CSG's corporate office and requested that action be taken against him. Initially, a female clinic administrator assured her that a controller would be notified of her claim and an investigation would ensue. Kurtts expressed her extreme discomfort about being around the physician and asked whether he would remain at the office. The clinic administrator told her that he would continue working and requested that she forward any sexually explicit text messages she received to her.

However, before initiating any manner of investigation, the clinic administrator called Kurtts and indicated that it was unclear what would occur in response to her complaint. She then asked her if she wanted her final paycheck. Accordingly, Kurtts accepted her final paycheck and resigned. In the end, CSG imposed no discipline on the physician, who was told simply to "cool off."

After Kurtts quit, she filed a lawsuit against CSG alleging sexual harassment and retaliation under Title VII of the Civil Rights Act of 1964 and various state claims. The district court concluded that the physician had subjected her to sexual harassment that was sufficiently severe or pervasive to alter the terms and conditions of her employment and create a discriminatory and abusive work environment.

The court also determined that Kurtts had suffered a constructive discharge, meaning a reasonable employee

AGENCY ACTION

BP agrees to settlement in refinery explosion case. The Occupational Safety and Health Administration (OSHA) announced in July that BP Products North America Inc. has resolved 409 of the 439 citations issued by the agency in October 2009 for violations at its refinery in Texas City, Texas. Under the agreement, BP will pay $13,027,000 and already has abated or will abate all existing violations by the end of 2012. In September 2005, OSHA cited BP for a then-record $21 million as a result of an explosion at its Texas City refinery that killed 15 workers in March 2005. The parties then entered into an agreement that required BP to identify and correct deficiencies. In a 2009 follow-up, OSHA found that although BP had made improvements at the plant, the company had failed to correct a number of items, which led the agency to issue 270 failure-to-abate notices. In a 2010 settlement, BP agreed to pay a penalty of $50.6 million to resolve those notices.

Association agrees to restore $27.3 million to benefit plans. The National Rural Electric Cooperative Association has agreed to restore $27,272,727 to the association-sponsored employee benefit plans covered by the Employee Retirement Income Security Act (ERISA). The agreement followed an investigation by the U.S. Department of Labor's (DOL) Employee Benefits Security Administration (EBSA) that found the association selected itself as a service provider to the plans, determined its own compensation, and made payments to itself that exceeded its direct expenses in providing services to the plans in violation of ERISA. Under terms of the agreement, the association won't provide administrative services to the group's retirement security plan, its 401(k) plan, and its group benefits plan without entering into a written contract or agreement with the plans that must be approved by an independent fiduciary.

Benefit plan trustees to correct improper plan loans. A federal judge in Chicago has signed a consent order between the United Employee Benefit Fund in Northbrook, Illinois, and the DOL to amend the United Employee Benefit Fund's governing documents so that they comply with requirements of ERISA and the Internal Revenue Code. An investigation found that the fund's trustees made loans to participants that were improper, unsecured, and allowed to become delinquent. The amount of the improper loans—totaling more than $1.7 million—will be subject to corrected loan documentation, repaid by plan participants, or treated as taxable distributions. Under the terms of the consent order, the fund's trustees will correct all prohibited transactions in which they engaged since August 2008 and will ensure that all loans meet all the requirements of ERISA and the code. ✤

would have resigned under similar circumstances. Nonetheless, the district court dismissed the case in CSG's favor because (1) it had a policy in place designed to prevent and promptly correct sexual harassment and (2) Kurtts unreasonably failed to take advantage of any preventive or corrective opportunities provided by CSG or to otherwise avoid harm.

11th Circuit's decision

On appeal, the 11th Circuit unanimously reversed the district court's decision, holding that CSG failed to show that it exercised reasonable care to prevent and correct the physician's misconduct. An employer's "threshold step" in correcting harassment is to determine if any harassment occurred, which requires a prompt investigation. While you aren't required to interview each and every witness or conduct a "full-blown, due process, trial-type proceeding," the court held that an employer must, at a minimum, investigate the allegations to arrive at a "fair estimate of the truth."

Applying that analysis to Kurtts' resignation, the 11th Circuit observed that when she expressed concern about continuing to work in the same office as the physician, the clinic administrator responded that the doctor would remain in the office. Further, "Kurtts was not given the option of taking temporary leave." The clinic administrator admitted that she couldn't state with any conviction that she actually told Kurtts that her complaint would be investigated. In fact, she recalled very little of the conversation.

Kurtts testified that she was frightened by the physician and understood the clinic administrator's statements to mean that CSG would *not* take her complaint seriously and no future action would be taken. Given those facts, the court concluded that a jury could reasonably find that Kurtts was forced to choose between only two options: (1) return to the status quo or (2) collect her final paycheck.

Accordingly, the court held that a jury could plausibly find that CSG failed to handle Kurtts' internal complaint appropriately because it didn't conduct an immediate and thorough investigation. Because the company failed to demonstrate the absence of any genuine issues of significant fact, it could be held vicariously liable for the physician's misbehavior.

Regarding Kurtts' retaliation claim, the appeals court found that the district court incorrectly determined that she didn't suffer a significantly adverse action as a consequence of reporting the physician's harassment, which constitutes "protected activity" under Title VII.

Generally, Title VII prohibits retaliation against an employee for opposing an unlawful employment practice or participating in an investigation, proceeding, or hearing. Notably, the court found that Kurtts' complaint reeked of retaliation—mainly because CSG responded to her complaint by inviting her to accept her final paycheck. Thus, the court revived her retaliation claim, holding that a reasonable jury could conclude that CSG's response "might deter a reasonable employee" from filing a harassment complaint.

Bottom line

In the wake of this decision, you should take heed that conducting prompt and thorough internal investigations is an effective tool in mitigating or completely avoiding costly sexual harassment claims. Should you find yourself in a position in which you know (or should know) of employee misconduct, it is imperative that you look into the alleged behavior immediately and conduct a thorough, well-documented investigation to ensure that minor incidents don't balloon into protracted and ugly litigation.

➥ *You can catch up on the latest court cases involving Title VII in the subscribers' area of www.HRHero.com, the website for Georgia Employment Law Letter. Just log in and use the HR Answer Engine to search for articles from our 50 Employment Law Letters. Need help? Call customer service at 800-274-6774.* ✤

REASONABLE ACCOMMODATIONS

Georgia federal court reasons that not all previous accommodations are reasonable

by Heath Edwards

According to a federal district court in Georgia, an accommodation isn't considered "reasonable" under the Americans with Disabilities Act (ADA) simply because you've offered it in the past. As a result, you may be able to revoke a previously provided accommodation if you can prove that its continued use would be unreasonable.

Background

The Equal Employment Opportunity Commission (EEOC) filed suit against an Atlanta-area location of a former drugstore chain that was sold to Rite Aid in 2007. The agency claimed in part that the store violated the ADA when it stopped offering a previously permitted accommodation to an employee before terminating her. The company denied any wrongdoing.

A few months after Rite Aid acquired the Atlanta-area drug store, a district manager and an HR manager both observed a cashier sitting in a chair while working at the counter. Both managers were surprised to find her sitting in the chair, namely because Rite Aid employees generally aren't allowed to sit while on duty.

In response to being quizzed about why she was sitting down, the cashier indicated that she had a doctor's note that explained her need for a chair. The managers later learned that the cashier was diagnosed with osteoarthritis sometime in 2001 and had been allowed to sit intermittently while on duty to relieve pain.

Because all Rite Aid employees are expected to frequently walk, stand, and lift items throughout the day as a part of their job duties, the company was concerned that the cashier wasn't able to perform the essential functions of her position. Accordingly, two different individuals within the company's loss prevention department reviewed footage of the store's cameras and discovered that the cashier regularly sat idle for approximately half her shift. Her inactivity caused productivity and personnel problems for the store. Specifically, the store wasn't meeting company standards, and other employees had to perform many of her duties.

The company asked the cashier for a more detailed doctor's note addressing her medical restrictions. The cashier provided a note indicating that she (1) required a chair when working at the register and (2) was limited to standing for 15 minutes or less at a time because of her osteoarthritis.

After receiving the updated physician's note, the two managers sought to find a more appropriate accommodation for the cashier. Specifically, they met with her to learn more about how long she would need an accommodation and the restrictions her impairment caused. During the course of the meeting, the cashier revealed that her impairment most likely was a permanent one.

Soon after, the cashier produced another doctor's note. This one stated that she needed to sit at least 30 minutes per hour throughout the workday. The note, however, did not provide a rationale for the restriction or a specific assessment of her limitations as the managers had requested. In fact, the cashier provided no additional explanatory documentation from her physician. When one of the managers faxed the doctor a job description and asked him to review it to ensure that the cashier could perform her job duties, he didn't receive a response.

Over the following days, the company concluded that the cashier's accommodation was too restrictive because of the physically demanding nature of her position. Thus, being unable to find a suitable alternative, the company terminated her, and the cashier filed suit.

Court's decision

Before trial, the company asked the court to dismiss the case. Regarding whether the employer had discriminated against the cashier in violation of the ADA, the court determined that no discriminatory conduct had occurred. Specifically, the court held that the company wasn't required to provide her a reasonable accommodation for her alleged disability because she wasn't qualified to perform the essential functions of her position.

According to the court, just because an employer *used* to provide an employee with a certain accommodation doesn't mean the accommodation was reasonable. The court further reasoned that an employer doesn't concede that a job function isn't essential simply because it

UNION ACTIVITY

Unions critical of trade agreement. The AFL-CIO along with the national labor organizations of Canada and Mexico have joined in urging caution regarding the announcement that Mexico and Canada have been invited to join negotiations for the Trans-Pacific Partnership Free Trade Agreement (TPP). In a joint statement, the unions said they would "welcome a TPP that creates good jobs, strengthens protection for fundamental labor rights, . . . protects the environment, and boosts global economic growth and development for all," but the unions said that American, Canadian, and Mexican workers "cannot afford another corporate-directed trade agreement." The statement said such an agreement must break from the North American Free Trade Agreement (NAFTA) to have a positive impact on working families. "The model of globalization enshrined in NAFTA promotes a race to the bottom in terms of wages, labor rights, environmental protection, and public interest regulation," the statement says.

NLRB urged to support professors who don't want union affiliation. The National Right to Work Foundation in July filed a friend-of-the-court brief with the National Labor Relations Board (NLRB) asking it to uphold U.S. Supreme Court precedent that the foundation says disallows union officials "corralling most university professors into unwanted union affiliation." The case involves Newspaper Guild of Pittsburgh/Communications Workers of America Local 38061 organizers' attempt to unionize professors at Point Park University in Pittsburgh and ultimately force the professors to pay union dues. Foundation attorneys argue that universities don't fit the industrial model of the National Labor Relations Act (NLRA). In *NLRB v. Yeshiva University* (1980), the Supreme Court reasoned that faculty members are endowed with "managerial status" at most universities, which removes them from the scope of the NLRA, according to the foundation. In a previous ruling in the *Point Park University* case, the NLRB approved unionization of the university's professors.

Union applauds decision on VA position downgrades. The American Federation of Government Employees (AFGE) and its National Veterans' Affairs Council praised the Department of Veterans Affairs' (VA) decision to halt the downgrade of low-wage positions within the agency. Over the past two years, low-wage employees in the VA healthcare system, including patient support assistants, medical records clerks, and transportation assistants, have been subjected to what the union calls the agency's "unfounded and arbitrary downgrades." The union held a rally in Washington, D.C., in June where VA employees and other union activists protested outside VA headquarters. ✤

was removed from the disabled employee's responsibilities. The court therefore concluded that allowing the cashier to sit idle for half her shift each day wasn't reasonable under the circumstances because many of her essential duties consisted largely of responsibilities that involved walking or standing for extended periods of time.

Moreover, the court wasn't persuaded by the EEOC's contention that the cashier had been a productive employee simply because she hadn't received any formal discipline. Instead, the court placed greater weight on the fact that her inability to perform many of her essential functions had forced other employees to increase their workload and detrimentally affected her store's performance. In other words, an accommodation that would "result in other employees having to work harder or longer" creates an undue hardship.

Finally, the court noted that the company hadn't violated the ADA by failing to engage in the interactive process. If an employee fails to identify a reasonable accommodation, as was the case with the cashier, you have no affirmative duty to engage in the interactive process. Nevertheless, the court held that the company had engaged in the interactive process by virtue of its multiple meetings with the cashier, which were for the express purpose of identifying and discussing potential accommodations. *EEOC v. Eckerd Corp.*

'Reasonable' takeaway

This decision is a boon to an otherwise proactive employer that may fear that past accommodations could come back to bite it if they are later discovered to be unreasonable. Relying on the court's decision, you should explore potential accommodations for your disabled employees with a lesser risk that your efforts may perpetually tether you to the accommodation. ✤

OCCUPATIONAL SAFETY

Distracted driving leading to big headaches for employers

The use of cell phones has quickly become the country's number one driving distraction. Sure, there are still people out there eating, applying makeup, or reading maps while driving, but almost everyone on the road has operated a cell phone or other mobile device in some way while driving. Driving while using a cell phone is not only dangerous but also deadly, as reports of accidents related to distracted driving continue to soar. It also can be expensive: Attorneys are winning big judgments against employers whose employees have been involved in distracted-driving accidents while on the clock.

Numbers on distracted driving

According to the National Safety Council report "Employer Liability and the Case for Comprehensive Cell Phone Policies":

- Motor vehicle crashes are the number one cause of work-related deaths and account for 24 percent of all fatal occupational injuries.

- On-the-job crashes are costly, with employers incurring more than $24,500 per property damage crash and $150,000 per injury crash.
- At least 24 percent of crashes in 2010 involved drivers using cell phones.
- The risk of a crash is four times as likely when a person is using a cell phone—handheld or hands-free.
- Studies have found that hands-free devices offer no safety benefit because they don't eliminate the cognitive distraction of conversation.

While the potential for injury or loss of life is the most important issue associated with distracted driving, you shouldn't discount the financial burden of being held liable for employees involved in such crashes. A recent *Washington Post* article recounted several jury verdicts against employers:

- A jury ordered an employer to pay $21.6 million to the family of a Florida woman who was killed when an employee in a company car rear-ended her because he was distracted and didn't react when traffic slowed.
- A federal magistrate ordered an Alabama trucking company to pay $18 million because of an accident that happened when one of its drivers reached for a cell phone.
- An Arkansas lumber company was ordered to pay $16.1 million after its salesman caused an accident that crippled a 78-year-old woman.
- International Paper paid $5.2 million to settle a case with a woman who lost an arm in a collision caused by an employee on a cell phone.
- A Texas jury ordered Coca-Cola to pay $21 million to a 37-year-old woman who suffered nerve damage to her back after she was hit by a car driven by a salesperson who was talking on a cell phone.

Federal, state prohibitions on distracted driving

In 2011, U.S. Department of Transportation (DOT) Secretary Ray LaHood pushed through federal rules that specifically prohibit interstate truck and bus drivers from using handheld cell phones while operating their vehicles. This year, the Federal Motor Carrier Safety Administration and the Pipeline and Hazardous Materials Safety Administration issued a joint rule prohibiting commercial drivers from using a handheld mobile phone while operating a commercial truck or bus. Recently, LaHood called for a federal law banning the use of cell phones while driving for all drivers of all motor vehicles, calling the use of cell phones while driving a "national epidemic."

Currently, 10 states, Washington, D.C., Guam, and the Virgin Islands prohibit all drivers from using handheld cell phones while driving. No state bans all cell phone use—handheld and hands-free—for all drivers, but many prohibit all cell phone use by certain drivers, such as bus drivers and those under the age of 18.

Distracted driving policies a must

All employers—not just those whose employees drive as part of their jobs—should not only have clear cell phone usage policies in place but also take steps to train and educate employees on the policies and on the known dangers of cell phone use while driving. The best policies should extend beyond the requirements of state and local laws, and you should be very strict and diligent in enforcing them. Here are some points to consider:

- A distracted-driving policy should clearly state that it's against company rules to text, e-mail, or use a handheld phone or communication device while operating a company vehicle, driving a personal

Turning policies into practice

Here are ways to help ensure that employees not only know about your cell phone policies but also abide by them:

- ✓ Conduct training and educational campaigns to increase awareness of the dangers of driving while operating a cell phone.
- ✓ When employees express concerns about being able to get their jobs done, present strategies that include avoiding teleconferences or scheduled calls during peak travel times, frequent rest stops during business trips, and automatic phone messages indicating employees will return calls when they stop driving.
- ✓ If employees drive as part of their work duties, check their driving record regularly (at least annually), not just when hiring new drivers.
- ✓ Require that employees involved in an accident or who receive a traffic citation while driving for business purposes promptly report the incident to HR.
- ✓ Use warning stickers or other literature placed in company cars and on company phones to remind drivers of your cell phone policy and the dangers of driving while on the phone.
- ✓ Establish a safe-driver rewards program.
- ✓ Practice what you preach. As with any other initiative, it's important that employees see management following your rules. If the higher-ups aren't spending every "free" minute behind the wheel on a mobile device, employees will feel more like hanging up and driving themselves.

vehicle for business use, or using a company-issued communication device while driving.

- Consider prohibiting the use of hands-free devices except in emergency situations.
- When essential calls must be made, instruct employees to pull off the road to a safe place.
- Require employees to acknowledge in writing that they have read and will comply with the policy.
- Let employees know they are liable, too. Include a statement in your policy that employees bear sole responsibility for liability incurred from traffic violations or accidents involving the use of a cell phone or other electronic device while driving.

Bottom line

With the physical and fiscal dangers of distracted driving running so high, you need to address it in your employee handbook, train employees on the policy and safety issues, and enforce the policy consistently. Generally, refraining from using a cell phone, laptop, tablet, or other mobile device while operating a motor vehicle must become part of everyday workplace culture. ✤

AGENCY NEWS

Can conciliation requirement coexist with systemic bias cases?

What happens when the Equal Employment Opportunity Commission's (EEOC) push toward strategic enforcement of antidiscrimination laws meets its statutory requirement to try to settle cases before filing a lawsuit? As courts address the agency's conciliation duties, the EEOC has been implementing a strategic plan to pursue more of what it calls systemic discrimination cases—those that affect groups of employees.

The interplay of those two competing goals is likely to affect many employers as the EEOC increasingly files high-profile discrimination cases. This development also underscores the importance of educating managers to deal lawfully with employees and setting up policies and procedures that allow you to address potential problems promptly.

Strategic plan calls for prosecuting more systemic cases

The EEOC's strategic plan for fiscal years (FYs) 2012 through 2016, released in February, says the agency will devote more of its resources to finding and prosecuting systemic discrimination cases. It also requires the agency to develop a separate plan for enforcement by October 1, the beginning of FY 2013. The EEOC is supposed to begin issuing guidance on the enforcement plan in FY 2013 and fully implement it in FY 2014.

The EEOC's annual "Performance and Accountability Reports" show an uptick in systemic bias cases. At the end of FY 2011, 580 systemic investigations involving more than 2,000 discrimination charges were under way, the agency said in a news release. In comparison, 465 systemic case investigations were in the pipeline at the end of FY 2010.

Legal commentators see danger for employers in the focus on systemic bias cases. They often require employers to produce extensive documents and data, and they aren't filed only against large employers. The EEOC may consider small and medium-size employers "low-hanging fruit" for litigation purposes, believing their compliance efforts are less sophisticated than those of the bigger companies and that they have fewer resources to fight the federal government. The EEOC's avowed intention to file more systemic bias cases also may place pressure on investigators to pursue allegations aggressively so they can "make their numbers." But the agency must pursue its goals within a broader statutory framework that encourages voluntary settlement of cases.

Fortunately for employers, some federal courts have been holding the EEOC's feet to the fire.

Some courts slap EEOC on conciliation, investigation

Fortunately for employers, some federal courts have been holding the EEOC's feet to the fire when it comes to meeting its conciliation obligations and dealing fairly with employers.

Earlier this year, the 8th Circuit dealt with the agency's duty to investigate and conciliate before filing a lawsuit on behalf of employees. By its own admission, the EEOC didn't conciliate many of the claims in the case and therefore didn't follow the requirement to conciliate.

The 8th Circuit further found that the EEOC didn't meet its duty to investigate 27 claims that occurred after the lawsuit was filed. The agency also didn't get credit for investigating another 40 claims in which it didn't identify the complaining party until after the lawsuit began. The court's ruling, dismissing those 67 claims, indicates that an EEOC investigation must allow an employer an opportunity to examine individual charges so there's a real possibility of settling the case before trial.

The bulk of the EEOC's case was dismissed, but the appeals court overturned the trial court's decision to require the agency to pay the employer millions in attorneys' fees. *EEOC v. CRST Van Expedited, Inc.*, 659 F.3d 657.

In a 2003 case, the EEOC had investigated allegations of bias for some 32 months but offered only a 12-day window for conciliation. That wasn't enough, the 11th Circuit ruled. The court dismissed the EEOC's case and awarded attorneys' fees. *EEOC v. Asplundh Tree Expert Co.*, 340 F3d 1256.

In other failure-to-conciliate cases, courts have required the EEOC to pay an employer's court costs. There are cases, however, in which courts have decided not to dismiss the EEOC's case but instead give the parties another chance to conciliate.

What employers can do

Even with some courts' efforts to make the EEOC follow statutory requirements, you need to be aware of the agency's interest in systemic bias. It's likely that the agency will assess the potentially broader impact of single-complainant investigations, especially when the case involves an employer policy that affects many employees.

You should consider the proactive measure of reviewing your policies and practices to ensure compliance with EEOC guidelines and regulations to reduce the risk of a systemic bias lawsuit.

You also need to take great care in responding to EEOC charges and requests for information. A lack of cooperation could send the wrong message, but responses that seek detailed companywide information in routine single-employee cases could serve as a springboard to further litigation. Work with experienced employment counsel if you're on the receiving end of an EEOC request for information. ✤

EMPLOYMENT CONTRACT

Employee handbook helper: contractual disclaimers

A favorite tactic of employment lawyers is suing employers for actual or perceived violations of employee handbooks. For that reason, it's imperative that you scrutinize your handbook to make sure it doesn't unintentionally create a contract with employees. This article discusses contractual disclaimers in employee handbooks and provides tips on how to properly draft them.

What not to say

The editors of *Georgia Employment Law Letter* recommend that you not use "obligatory" or "promissory" terms in your employee handbook to describe your responsibilities because they suggest elements of a contract —specifically, offer and acceptance. In other words, if a handbook states that you will evaluate employees annually and the employee continues to work in reliance on that representation, he might be able to argue that a contract was created.

Therefore, your handbook shouldn't contain policies that suggest a promise clear enough that an employee would reasonably believe that an offer had been made or that he would have accepted such an offer by continuing to work after learning of the policy. Going back to the employee evaluation example, you should state in your handbook that you will *attempt* to evaluate employees annually, not that you *will* evaluate employees annually.

If not carefully drafted, employee handbooks can create unwanted and unforeseen contractual obligations.

What to say

Aside from avoiding policies that create the impression of a contractual relationship, you should clearly state in your handbook that the handbook itself is *not* a contract. Consider using the following provision:

> Nothing in this Handbook is intended to create (nor shall be construed as creating) an express or implied contract of employment or to guarantee employment for any term or to promise that any specific procedures must be followed by the Company. The Company reserves the right to modify, change, delete, or add to, as it deems appropriate, the policies, procedures, benefits, and other general information in this Handbook.

In addition to disclaiming any contractual relationship with employees, you should unequivocally establish that the employment relationship is "at will." For example, your handbook should contain a provision akin to the following:

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10-9 Pay-for-Performance: Practical Strategies That Incentivize Your Workforce in a Cost-Effective Way

10-9 Baby Boomer Age Discrimination Claims in California: Policies and Practices to Shield Your Organization ✤

> While the Company hopes that your employment relationship with it will be a satisfactory one, you may resign your employment at any time for any reason at all, with or without notice. The Company may similarly terminate the employment relationship at will.

To provide maximum flexibility in disciplinary matters, you should consider adding a disclaimer to your disciplinary rules. For instance:

> All employees are to follow established policies, procedures, and rules and to act in a professional manner at all times. Generally, the Company may use corrective action that is less severe than discharge. Examples include oral counseling, written counseling, suspension with or without pay, and probation. Because circumstances vary in each case involving possible corrective action, each situation will be handled on an individual basis with the severity and frequency of the conduct taken into consideration. However, as previously noted, employment may be terminated at will by the employee or the Company at any time with or without cause and without following any system of discipline or warning.

Bottom line

All employers should have an employee handbook that provides the terms and conditions of employment. However, if not carefully drafted, employee handbooks can create unwanted and unforeseen contractual obligations—or at least provide disgruntled current or former employees (and their lawyers) with fodder for a lawsuit. Using the disclaimer language discussed above will allow you to continue using your handbook without creating legally complicated contractual obligations with employees. ✤

LABOR FORCE STATISTICS, PETITIONS FILED NOW ONLINE

The quarterly "Labor Force Statistics" charts reporting the unemployment rates, average hourly wage, and Consumer Price Index data and the monthly union petitions filed in Georgia are now available online at www.HRHero.com, the website for *Georgia Employment Law Letter*. As a newsletter subscriber, you must first log in on the homepage and then scroll down to the link for "LABOR FORCE STATISTICS" or "GEORGIA UNION ACTIVITY." Need help? Call customer service at 800-274-6774.

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