

Issue #5 - Spring 2006

The Office of Equal Opportunity and Diversity (OEOD) E-News

A quarterly electronic newsletter with the latest information on policies and programs related to diversity, discrimination, retaliation and sexual harassment.

Interesting Cases

ADA Does Not Require Telecommuting as an Accommodation

The Americans with Disabilities Act (ADA) requires an employer to “reasonably accommodate” disabled employees, and sometimes that may include modifying their work hours or allowing them to work from home. However, in *Rauen v. United States Tobacco Manufacturing Limited Partnership*, the 7th Circuit court recently confirmed that the requirements of the position will be considered when determining if telecommuting is “reasonable.” If the job’s essential functions demand the employee’s presence at the workplace, the employer may require an alternative accommodation.

9th Circuit Allows Differential Grooming Standards

The 9th U.S. Circuit Court of Appeals granted summary judgment to Harrah’s in a case where a former employee sued the company on the basis of sex discrimination for requiring her to wear make-up. The majority of the court ruled that the plaintiff failed to provide evidence that an unequal burden was placed on women (since both sexes had different, off-setting requirements), and that evidence was not provided to show that the policy was motivated by sex stereotyping. A dissenting opinion disagreed, believing the policy was motivated by sex stereotyping. A subset of those judges also disagreed with the majority regarding the lack of evidence of an unequal burden. The judges noted that expert testimony is not needed to determine that there are costs of time and money to comply with the make-up requirement and that the make-up requirement was a daily endeavor, whereas the differential requirements for men were not.

“The inescapable message is that women's undoctored faces compare unfavorably to men's, not because of a physical difference between men's and women's faces, but because of a cultural assumption - and gender-based stereotype - that women's faces are incomplete, unattractive or unprofessional without full makeup.”

From Dissenting Opinion of 9th U.S. Circuit Court of Appeals decision in *Jespersen v. Harrah's Operating Company, Inc.*

Transgender Employee Wins Hostile Environment Claim

A transgender Yale employee recently won a hostile environment claim.

Erin Dwyer worked at Yale University from 1985 to 2002 and legally changed her identity from male to female in December 2000. Dwyer was employed as a pantry worker at Yale University and she was subjected to derogatory comments and threats from her co-workers every day. When she complained to the university, she was transferred to a lower paying position. The State of Connecticut Commission on Human Rights and Opportunities decided that Yale violated Connecticut’s anti-discrimination law by failing to take reasonable steps to remedy the hostile work environment. OEOD reminds readers that under California’s Fair Employment and Housing Act and UCI policy, faculty, staff and students are protected against discrimination based on gender identity.

OCR Confirms Importance of Addressing Third Party Sexual Harassment

The U.S. Department of Education's Office of Civil Rights (OCR) recently confirmed that sexually suggestive comments made within earshot of an innocent bystander may constitute sexual harassment under Title IX of the Education Amendments of 1972, especially if the statements were made in a confined area, regardless of whom the statements were aimed at. OCR guidance says: "A hostile environment can occur even if the harassment is not targeted specifically at the individual complainant. For example, if a student, group of students, or a teacher regularly directs sexual comments toward a particular student, a hostile environment may be created not only for the targeted student but also for others who witness the conduct."

Gallup Poll Shows 1 in 6 Experience Bias in the Workplace

A December 2005 Gallup poll found that nearly one in six U.S. employees say they were discriminated against at work in the last year. Middle-aged women and minorities were more likely to report being targets of discrimination. Also, women were more than twice as likely to claim discrimination as men. Other poll findings reveal most complaints involved gender bias (26 percent), followed by race (23 percent), age (17 percent), favoritism (12 percent) and disability (9 percent). The poll was conducted in conjunction with the 40th anniversary of the Equal Employment Opportunity Commission (EEOC) and addressed perceptions of discrimination over the four decades since the EEOC was founded. For more information, visit <http://www.gallup.com>.

BHG Gives Tips for Raising Unbiased Children

The March 2006 issue of *Better Homes and Gardens* addressed the family impact on prejudiced attitudes. In its article "Nip Bias in the Bud" (p. 140), the author writes "*Unintended biases can creep into what parents say and do, and before they know it, kids pick up thoughts, attitudes, and body language based on how they perceive their parents feel.*" The article also recognizes that children are exposed to external sources of biased views. *BHG* offers families some steps to take to help the next generation appreciate the diversity of our communities and provides tips on what to do if your child is the victim of bias. For more information, check out the March issue of *Better Homes and Gardens*, or go to www.bhg.com and search for "Raising Unbiased Kids."

Upcoming Events

To find diversity-related events taking place at UCI, check out the calendar at www.eod.uci.edu. If your department is sponsoring a diversity-related event, please email information about the event to eod@uci.edu to be added to the OEOD event calendar.

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