

Straight from the Headlines: Employment Law News You Can Use

October 8, 2024

Bob Coursey, Esq., SPHR, SHRM-SCP



Today's Format

- ***Headline***
- ***Facts***
- ***Legal Claim/Issue*** (actual or potential)
- ***Lessons***

Today's News

- DEI
- Employee speech/expression vs. LGBT+ rights/preferred names and pronouns
- Employee speech/expression and sex
- Discrimination
- Labor law / Fair Labor Standards Act tip credit
- High profile hijinks

DEI

- **Headline:** “Lowe’s changes DEI policies amid activist pressure.”
- **Facts:** “Lowe’s is the latest big company to alter its DEI policies amid pressure from conservative podcast host and activist Robby Starbuck.” Lowe’s will end identity-based employee resource groups, limit sponsorships to issues related directly to its business (e.g. disaster relief), and stop participating in Pride events. Lowe’s says it had already been reviewing its DEI policies after the 2023 Supreme Court case that struck down affirmative action in higher education.
- **Legal Claims:** Discrimination?
- **Lessons:** Be extremely careful when setting up DEI programs! Consider PR.

DEI

- **Headline:** “White male law student settles suit against Chicago Bears over ‘Legal Diversity Fellow’ position.”
- **Facts:** In fall of 2023, the Chicago Bears posted a job posting for a “Legal Diversity Fellow,” to be filled by a student from a local law school. Qualifications included that the applicant must be a “person of color an/or female”. In November 2023, a white male applied for the fellowship but was rejected. He then filed a lawsuit alleging violations of Title VII. Settled in August 2024
- **Legal Claims:** Discrimination
- **Lessons:** Be extremely careful when setting up DEI programs! Consider PR.

Employee speech/expression

- **Headlines:**
 - “Teacher says contract wasn’t renewed b/c he wouldn’t use trans students’ preferred names”
 - “Virginia Supreme Court lets teacher’s ‘pronoun’ lawsuit go forward”
 - “Teacher refused to use preferred pronouns and was fired, suit says. Now district owes.”
- **Facts:** Public school teachers refused to use preferred names/pronouns of transgender students, claiming doing so violated their religious beliefs. Schools fired them.
- **Legal Claims:** Title VII/failure to accommodate religion; 1st Amendment and state equivalents*; breach of contract
- **Lessons:** Review new EEOC harassment guidance. Understand new religious accommodation standard. Update and train on religious discrimination/accommodation/harassment policies. State law matters!

Employee speech/expression (and sex!)

- **Headlines:**

- “Special needs teacher fired after school district discovered OnlyFans account”
- “Missouri teacher who resigned after school found OnlyFans page gets fired from new job”
- “University of Wisconsin-La Crosse chancellor fired for appearing in porn videos”

- **Facts:** Educators engaged in sexual activity via OnlyFans accounts or porn sites. When schools learned of the activity, they fired or pressured the educators to resign.

- **Legal Claims:** State law claims? Lawful off-duty conduct? 1st Amendment? Discrimination? Breach of contract?

- **Lessons:** Know your state laws. State your company’s “essential business-related interests” clearly. Be consistent.



Discrimination

- **Headline:** “A religious discrimination case against Dave Ramsey can proceed, federal court rules.”
- **Facts:** Term’d employee sued Ramsey Solutions, claiming company term’d him for his religious beliefs about safety precautions during the early stages of Covid. Former employee claims company believes that masking/social distancing/vaccinating are “against the will of God” and employees were required to agree. Company claims termination was performance/conduct-based.
- **Legal Claims:** Title VII religious discrimination
- **Lessons:** Understand and train on new religious accommodation legal standard. Update policy. Performance management and documentation!

Labor law / FLSA tip credit

- **Headline:** “Barnaby’s Café employee alleges restaurants cut waiters’ pay after Beryl.”
- **Facts:** Barnaby’s employee leaked memo from corporate to restaurant managers announcing that direct wage paid to servers would be reduced from \$5.00/hour to \$2.13/hour. Memo included this language: “Do not discuss this with customers or post about it on social media. Doing so can lead to disciplinary action, up to and including termination.” The leaking employee opined (and the media reported) that this would result in a loss of pay of almost \$2400/year.
- **Legal Claims:** Protected, concerted activity under the NLRA? Tip credit?
- **Lessons:** Understand PCA rights (what and who). Understand tip credit if you use it.

High profile hijinks

- **Headline:** “New York Knicks sue former employee, Toronto Raptors personnel over alleged stolen proprietary information”
- **Facts:** Knicks employee sent Raptors thousands of confidential files, including play frequency reports, a prep book for the 2022-23 season, video scouting files, opposition research, etc., after the Raptors began recruiting him in summer 2023. Raptors "directed [the employee's] actions and/or knowingly benefited from his wrongful acts.”
- **Legal Claims:** Civil/criminal theft; breach of employment agreement, tortious interference.
- **Lessons:** Take all reasonable measures to protect your IP. Use solid and customized legal agreements. Use IT to catch forwarding emails to personal accounts.

High profile hijinks

- **Headline:** “Elon Musk targets laid-off Twitter employee by claiming he used his disability as an excuse”
- **Facts:** Employee, who has muscular dystrophy and uses a wheelchair, tweeted at Musk that access to his work computer had been cut off but that he was unsure if he had been terminated as part of the mass layoffs then occurring. (He had.) Musk responded: “The reality is that this guy (who is independently wealthy) did no actual work, claimed as his excuse that he had a disability that prevented him from typing, yet was simultaneously tweeting up a storm. Can’t say I have a lot of respect for that.”
- **Legal Claims:** ADA, defamation
- **Lessons:** Don’t say negative things about employees’ disabilities. Don’t make untrue statements about employees that could damage their reputations. This applies times 1000 when it comes to social media. Always consider employee morale.

High profile hijinks

- **Headline:** “Disney World Is Being Sued By A Former Cast Member Over 'Hostile Work Environment'”
- **Facts:** Employee worked at Disney retail store. She suffered from health issues, including cerebral palsy and Crohn’s. She requested accommodations, including the ability to sit every 30 minutes, not having to lift anything over 10 lbs, and more frequent restroom breaks. Disney rejected her requests. She claims Disney then subjected her to a hostile work environment, including pressuring her to quit, reducing her hours, and ultimately firing her.
- **Legal Claims:** ADA failure to accommodate, harassment, retaliation
- **Lessons:** Fully engage in the ADA’s interactive process. Accommodate when appropriate. Don’t harass/retaliate after accommodation requests. Consider PR.



Thanks for having me!

Bob Coursey, Esq., SPHR, SHRM-SCP
Modern Age Employment Law LLC
(801) 793-9162

bobcoursey@modernagelaw.com

www.modernageemploymentlaw.com

www.linkedin.com/in/bobcoursey/

