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HOSPITALITY LAW

Helping the Lodging Industry Face Today's Legal Challenges

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Illinois court holds that meal credit program is valid

Employer's reconstruction of costs helped it obtain summary judgment

By Jeffrey H. Ruzal

Providing an employee meal program may be a nice gesture, but requires companies that do so to maintain proper records in case their meal plans are challenged. An Illinois appellate court recently affirmed a circuit court's dismissal of plaintiff restaurant worker's class action claim that defendant restaurant employer took improper deductions from plaintiff's wages to fund a meal credit program.

In *Monson v. Marie's Best Pizza, Inc., et al.* No. 1-13-0979 (06/20/2014), employee Christina Monson alleged that her employer, Marie's Best Pizza, a Giordano's Pizza franchisee, maintained an unlawful policy and practice of deducting a quarter per hour from her wages as part of a meal credit program because the cost to Marie's to provide the program was substantially less than the amount that the restaurant collected from its employees for it. Marie's has provided meals to employees during each shift since 1984 through its meal program. The program entitled each employee to a free meal chosen from a list of 14 meals on a special employee menu and at least one drink from the soda fountain during each shift.

Monson claimed that she did not eat a meal under the program every shift she worked, and she knew of other employees who also did not eat a meal during every shift. She claimed that this practice violated both the Illinois Wage Payment and Collection Act and Illinois Minimum Wage Law.

After the conclusion of discovery, Marie's moved for summary judgment, arguing that the cost of the program was reasonable and that the restaurant did not profit from it. The restaurant presented extensive evidence to show the cost to Marie's for the meals provided to the employ-

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District court wrongly interprets same-sex harassment law

Employee did not need to prove that alleged harasser was gay

By Dave Sherwyn

The law concerning same-sex sexual harassment has been seemingly settled for almost 20 years, but the courts still seem to struggle with the issue. In *Rene v. MGM Grand* (9th Cir. 09/24/2002), the U.S. Court of Appeals for the 9th Circuit used tortured logic and intellectual dishonesty to find for a hotel employee who was harassed because of his sexual orientation, a class not covered by Title VII. Similarly, in *Hawkins v. Avalon Hotel Group*, No. 12-570-SDD-RLB (M.D. La. 12/13/2013), a court misapplied the law by holding that in order to prove same-sex harassment that the employee had to prove the harasser was gay. But the law is clear, and in *Hawkins*, the U.S. District Court for the Middle District of Louisiana got the law wrong.

In the *Hawkins* case, the district court misinterpreted the U.S. Supreme Court's same-sex sexual harassment holding in *Oncale v. Sundower Offshore Services, Inc.*, 523 U.S. 75 (1998). In *Oncale*, the plaintiff, an employee on an off-shore oil rig where all of the employees were male, alleged that he was "sexually harassed" by his coworkers. The allegations included that Joseph Oncale's coworkers held him down and sodomized him with a bar of soap.

In dismissing the case, the U.S. Court of Appeals for the 5th Circuit held that the there was no such thing as same-sex sexual harassment. In overturning the case, U.S. Supreme Court held that there was a cause of action for same-sex harassment as long as the conduct was "because of sex." The definition of "because of sex" is where the *Hawkins* court went wrong.

In explaining how plaintiffs could prove conduct was because of sex, the *Oncale* court first stated that in harassment cases between men and women, the courts could infer that

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... [T]he court held that record included specific incidents of the alleged abuse and harassment that the sisters were subjected to, and that the allegations were subjectively severe and pervasive enough to alter the terms of their employment.

3 sisters granted summary judgment on harassment claims

Employees alleged they endured extremely hostile work environment

When an employee claims of sexual harassment or abuse, a smart hospitality employer begins an investigation immediately. In *D'Annunzio, et al., v. Ayken Inc. d/b/a Ayhan's Fish Kebab Restaurant, et al.*, No. 11-CV-3303 (WFK) (WDW) (E.D. N.Y. 06/10/2014), a district court held that three sisters who claimed they endured harassment — and one of them a sexual assault — may proceed with their claims against their former employer.

In 2008, employee Lauren D'Annunzio was violently and sexually assaulted by her coworker, Juan Pablo Orellano, in the basement of Ayhan's Fish Kebab Restaurant. Orellano was charged and deported. D'Annunzio, who was 17 at the time, filed a complaint against the restaurant, alleging that she and her two sisters, who also worked at the restaurant, were subjected to sexual harassment and a hostile work environment. They claim that the employees made unwanted sexual comments, slapped their buttocks, and touched them inappropriately. They also said that the restaurant was aware of the harassment and took no corrective action.

The restaurant had an employee handbook, which contained policies on harassment and misconduct, but stopped distributing it in 2002, and did not display any posters about sexual harassment. General manager Dario Gomez was responsible for the disciplining, training, hiring and firing of all restaurant employees except the chef and assistant managers, and said he did not recall whether he spoke to new hires about harassment policies during training. When Gomez hired Orellano, he did not call any of his references or conduct a background check.

All three of the D'Annunzio sisters claimed that they endured unwanted touching and sexual harassment from Orellano. Two of the three sisters said that they complained three times each about the harassment. The third also lodged a complaint. However, they said that despite the multiple complaints that Gomez failed to discipline Orellano or report his conduct to the company's human resources director. The restaurant, Gomez and owner Ayhan Hassan moved for summary judgment; the D'Annunzios filed a cross motion for summary judgment.

A district court granted summary judgment to the D'Annunzios, and denied the defendants' motion, holding that the D'Annunzios provided overwhelming evidence that they were subjected to a hostile work environment, culminating in the attack on one of them. Although Hassan and Gomez attempted to dispute the extent of the harassment endured by the D'Annunzios, the court held that record included specific incidents of the alleged abuse and harassment that the sisters were subjected to, and that the allegations were subjectively severe and pervasive enough to alter the terms of their employment.

"[The] [d]efendants' absurd attempts to argue that the grabbing and slapping of Plaintiffs' butts, touching of breasts, and pulling up of Plaintiff Lauren's blouse constitute nonactionable "innocuous physical contact" are an outrageous misstatement of the record," the court said. ■

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Valet did not have duty to withhold car keys from patron

Estate also failed to show that man was visibly intoxicated at casino

Hospitality companies are generally well aware of their responsibilities when it comes to serving alcohol to patrons. But do those duties extend to valets? That was the question asked of the court in *Moranko, et al., v. Downs Racing LP, d/b/a Mohegan Sun at Pocano Downs*, No. 192 MDA 2013 (Pa. Super. Ct. 06/24/2014).

Faye Moranko filed a wrongful death and survival action, alleging that her son, Richard Moranko, consumed "copious amounts of alcohol" at Mohegan Sun before retrieving his vehicle from a valet service. Shortly after he left, he was involved in an automobile accident, resulting in his death. Moranko argued that Mohegan Sun was negligent in serving her son alcohol and handing over the keys to his vehicle when he was allegedly visibly intoxicated.

Mohegan Sun filed a motion for summary judgment, arguing that Moranko failed to produce sufficient evidence that her son was served while visibly intoxicated, and claimed that there is no cause of action in Pennsylvania allowing recovery against a valet service for giving a visibly intoxicated customer the keys to his vehicle.

A trail court granted Mohegan Sun's motion; Moranko appealed, but the Superior Court of Pennsylvania affirmed the ruling. The court held that state law did not impose a duty on Mohegan Sun and its valets to withhold the keys to a vehicle if an owner appears intoxicated.

The court noted that Moranko produced no evidence to support her claim that Mohegan Sun served alcohol to her son while he was at the casino prior to the accident. Moranko also claimed that Mohegan Duty failed to comply with its policies of dealing with intoxicated patrons, but the court disagreed, noting that the casino had a policy for dealing with visibly intoxicated patrons on the casino floor, and had no such policy that required valets to withhold keys from visibly intoxicated patrons. Moranko also argued that Pennsylvania implies that the valet owed her son a general duty of care, but the court found that the statute she cited applied to third-person liability, which did not apply.

The court noted that while no Pennsylvania court decisions specifically address valet liability, the courts have generally concluded that the valet "was duty bound to surrender control of the decedent's vehicle when it was demanded, notwithstanding the decedent's alleged intoxication. When the decedent requested the return of his vehicle, Mohegan Sun … lost the right to control the car."

Since the casino had no right of control, the court held that it could not be found liable for the decedent's actions once the car was returned to his possession. ■

A casino's duty of care

By Diana S. Barber

in the *Moranko v. Downs Racing* case, the court didn't want to extend or create a duty of care to valet service providers.

Faye Moranko was not able to show that the Mohegan Sun casino actually served liquor to the decedent. We are not sure how the court would have ruled if the Moranko had proven that the casino did serve or sell alcohol to the decedent, but in either event, the court reasoned that when a patron gives his car and the keys to a valet, a bailment is created.

The legal duties imposed in a bailment situation require the bailee to return the personal property back to the owner (the driver) in the same or better condition as when the bailment was established. If the valet had decided to hold back the keys from the driver because of alleged intoxication, then the tort claim of conversion could apply against the valet. Once possession was returned to the driver, the valet no longer had any control over the vehicle.

One of more interesting points raised in the court's opinion was the dissent, which focused on the fact that the casino had policies in place to prevent patrons from gambling on the casino floor while intoxicated, but noted that the policies did not extend to intoxicated patrons intent on driving off the premises. Testimony presented at the trial showed that employees were trained to recognize intoxicated guests, and to purposely slow down the car retrieval process until a manager could be alerted to provide guidance on how to proceed. Since the casino was clearly concerned about patrons gambling while intoxicated, why then were they not equally concerned about the safety of the patrons when in the parking garage?

While these are good points to consider, the majority did not agree with the dissenting opinion and no duty of care was extended to the valet staff.

Diana S. Barber is an attorney and faculty member at the Cecil B. Day School of Hospitality at Georgia State University. ■

Lawmakers introduce bill dictating how schedules are set

U.S. Reps. George Miller, D-Calif., and Rosa DeLauro, D-Ct., and Senator Tom Harkin, D-Iowa, introduced in Congress H.R. 5159, called the Schedules That Work Act, a bill that would control how employers schedule many of their lower-wage workers. If the law passes, the hospitality industry will be among the most affected by the change.

The bill would give workers in all industries the right to request a flexible, predictable, or stable schedule, without fear of retaliation. For workers in the retail, restaurant, and building cleaning sectors, employers would be required to provide two weeks' advance notice of schedules and compensate employees who are sent home before the end of their shifts, work a split shift, or are assigned on-call shifts.

"Workers need scheduling predictability so they can arrange for child care, pick up kids from school, or take an elderly parent to the doctor," said Miller. "The Schedules That Work Act ensures that employers and employees have mutual respect for time dedicated to the workplace."

The Schedules That Work Act would require employers to accommodate the scheduling needs of workers who attend school or who have serious illnesses, caregiving responsibilities, or more than one job, unless the employers have bona fide business reasons for not doing so. ■

"Employers should not assume that a basic reconstruction of a meal program absent the specific calculations and factual details provided by the restaurant in Monson will be sufficient."
— Jeffrey H. Ruzal, attorney

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ees, the average length of the shifts worked for each month of the entire class period, as well as surveys taken from the restaurant's employees showing that they used the meal program on a regular basis and wanted to continue to use the program.

Among other evidence, the restaurant also presented invoices showing the cost of ingredients and charts displaying the average cost to them for each meal offered to the employees. In an affidavit, one of Marie's franchisee principals explained in detail how the restaurant calculated the cost of each meal based on the cost of the ingredients in bulk and the amount of each ingredient used in each meal. Marie's said that the cost of the cheapest meal from the employee menu, along with a fountain beverage, cost the restaurant $1.87 to provide. The average cost of providing a meal and beverage was $2.64.

The lower court granted summary judgment for the restaurant, finding that it produced sufficient evidence demonstrating that they "made no profit and, therefore, did not deduct more than the reasonable cost of employee meals. There was no violation under either the IMWL or IWPCA."

The court noted that the average deducted from an employee's shift for the meal program was $1.67, and that Marie's made no profit — and therefore did not deduct more than the reasonable cost of employee meals.

Monson appealed, arguing that in order for Marie's to show that their meal program did not violate Illinois' wage laws, the restaurant was required to retain adequate records demonstrating its actual cost incurred in providing employees with meals. Monson also claimed that the trial court incorrectly held that Marie's could use estimated costs and figures, rather than actual data, to determine the actual cost the restaurant incurred in operating the meal credit program.

The appellate court disagreed, finding that neither the IMWL nor IWPCA requires that an employer show the actual cost of a meal program. The court stated, in relevant part, that, "no court has yet found fit to interpret the Minimum Wage Law or the Collection Act to require an employer to show the actual cost of providing a meal credit program and the plain language of the statutes do not require a showing of 'actual cost.'" Furthermore, "in interpreting the [Fair Labor Standards Act], courts have declined to require an employer to show the actual cost of providing a meal credit program."

Even though Illinois law does not require evidence of "actual cost" to maintain a meal program to comply with wage laws, best practice dictates that employers should. In Monson, both the lower and appellate courts were satisfied with the restaurant's reconstruction of the meal program's cost; however, Marie's presented a great deal of specificity in order to withstand judicial scrutiny. Employers should not assume that a basic reconstruction of a meal program absent the specific calculations and factual details provided by the restaurant in Monson will be sufficient. By maintaining accurate and extensive records of employee meal plans, employers will not need to scramble to try to reconstruct the cost and use basis if their plans are challenged.

Jeffrey H. Ruzal is a senior counsel in the Labor and Employment group in the New York office of Epstein Becker Green. ■

Meal credit programs

Employers are permitted to have meal credit programs under federal law, and the law permits that an employer's reasonable costs of providing meals to its employees may be determined by the average reasonable cost of providing employee meals without regard to whether any individual employee actually takes advantage of the employer provided meals.

Under its guidance to restaurants who offer meal credits to ensure compliance with the Fair Labor Standards Act, the Department of Labor notes that an employer may take credit for food which is provided at cost, which most typically is in the form of an hourly deduction, like in *Monson*. However, the guidance clearly states that an employer cannot take credit for discounts given employees on menu prices.

The lower court in Monson stated that the "reasonable cost of providing meals to the employees may be determined other than on an individual employee basis and is a common question of fact, not an individual one. There is no need to determine the cost of each different variety of meal provided or to determine how many meals each employee ate during each pay period."

Despite the court's comment, employers would be wise to diligently record:

- The meal consumed;
- The name of the employee consumer; and
- The restaurant's actual cost of providing that meal to the employee. ■

Hotel terminated housekeeper for policy violations, not disability

Court also held that worker's race discrimination must be dismissed

When an employee who has a disability has committed a termination-worthy infraction, employers often worry that the action will be perceived as discriminatory. In *Cackovic v. HRH Chicago, LLC, d/b/a Hard Rock Hotel,* No. 12-cv-07386Cackovic (N.D. Ill. 06/26/2014), good policies and record-keeping helped a hotel obtain summary judgment in a lawsuit filed by a former housekeeper with a disability.

Kada Cackovic, who is of Bosnian descent, worked the evening shift at the Hard Rock Hotel. As a housekeeper, Cackovic was entitled to a half-hour lunch break and two 15-minute breaks. Housekeepers were not permitted to take breaks in the hotel's guest rooms, and were supposed to inform their supervisor when they were taking breaks.

Cackovic claimed that her supervisor, who did not have the authority to discipline, made negative comments to Cackovic and other Bosnians about how it was difficult to communicate with them, and that they took jobs away from other Americans. She complained to human resources that the supervisor gave her so much work that she couldn't finish it all, and alleged that a black housekeeper would often come to work, clean just a few rooms, and spend the rest of the time with the supervisor drinking coffee.

In 2009, Cackovic was diagnosed with diabetes and anxiety. She told her supervisor of her health issues, and was granted permission to take a break whenever her blood sugar dropped and to sit for 15 minutes to see how she feels. She was never denied a break or disciplined for taking more than two breaks per day.

In 2012, Cackovic told her supervisor to shut up when asked to help another housekeeper. That night, the supervisor went looking for her after she refused to answer her radio and eventually learned that she was in a guest room with the door deadbolted. When she finally came out, Cackovic said that she did not feel well and had been in the room about 10 minutes. When HR looked at the key card records, however, the hotel learned that Cackovic had been in the room with the door deadbolted for about an hour and a half that evening. She was terminated for violating company policy, including lying about how long she was in the guest room, accessing a guest room for non-work related purposes, unauthorized absence from her work station, excessive breaks, and insubordination.

Cackovic filed a complaint alleging that she was discriminated against because of her disability and national origin. A district court dismissed Cackovic's claims. Regarding her national origin discrimination claim, the court noted that Cackovic's allegations that her supervisor made disparaging remarks did not hold up because the alleged comments were not made close in time to her firing, nor was the supervisor a decision-maker in her termination.

The court also found that Cackovic presented no evidence that any alleged discriminatory animus by the supervisor was the proximate cause of her termination, or that non-Bosnian employees were treated more favorably after violating company policies.

Regarding her disability discrimination claim, the court held that Cackovic failed to show that she was meeting Hard Rock Hotel's legitimate business expectations when she was terminated. While Cackovic admitted to violating policy by taking an extended unauthorized break in a guest room, she argued that she violated the policy because of her diabetic condition, and that therefore, her termination amounted to disability discrimination.

The court noted that Cackovic's unauthorized break was different than when her supervisor made accommodations for her to take breaks whenever she had a diabetic episode. Even if her condition excused her from violating company policy, the court noted that she was not meeting her employer's legitimate expectations at the time of her termination. ■

Stray remarks and discrimination

The courts have held that isolated comments that are no more than "stray remarks" in the workplace are insufficient to establish that a particular decision was motivated by discriminatory animus.

The court in *Cackovich* acknowleged that for disparaging remarks to constitute direct evidence of discrimination, the remarks must be:

(1) Made by the decision-maker;

(2) Close in time to the decision; and

(3) Related to the adverse employment action. ■

MSU study finds significant value in Travel Promotion Act

Travel Promotion, Enhancement, and Modernization Act, also known as Brand USA, is on its way to the U.S. House floor, after the reauthorization of the Act, H.R. 4450, was unanimously approved by the House Energy and Commerce Subcommittee on Commerce, Manufacturing, and Trade. While the bill is widely supported by the hospitality industry, critics have questioned its value. However, a new study from Michigan State University has found evidence that the Travel Promotion Act has had a positive economic impact.

"We found positive stock market reactions related to the passage of the act and therefore agree with economists' projections that additional tax revenue and jobs are likely to be created in the future," said Mark Johnson, professor of practice, finance, in MSU's Broad College of Business and lead investigator on the study. "The program appears to be a win-win for taxpayers and people who work in the hotel industry."

Critics have said the program would add little value to the travel industry, as large corporations already spend a lot of money on promotional campaigns.

Johnson and colleagues found a measurable impact. Specifically, Brand USA was associated with an increase in the value of publicly traded hotel firms by some 2 percent, which represents about $1 billion. ■

HARASSMENT (continued from page 1)

explicit or implicit sexual proposals were because of sex. The court continued that:

(1) A similar inference could be made in the same-sex sexual harassment case if the harasser were homosexual. "But," the court stated, "harassing behavior need not be motivated by sexual desire to support an inference of discrimination on the basis of sex." For example:

(2) The female plaintiff could make out a case if she could prove that the female harasser was motivated by general hostility to women in the workplace; or

(3) The female plaintiff could offer comparative evidence of how the harasser treated members of each sex.

Regardless of the evidentiary route, the court held that the plaintiff must prove that the conduct was "because of sex."

The *Hawkins* court, seemingly relying on 5th Circuit precedent, held that the three examples of same-sex harassment were the only three ways to prove the harassment occurred. Since Peggy Hawkins did not have evidence to support the second or third methods of proof, the court reasoned that she had to prove that the harasser was homosexual. The court went so far to state, "*Oncale* requires that a plaintiff show that the alleged harasser made "explicit or implicit proposals of sexual activity" ***and*** provide "credible evidence that the harasser was homosexual." This is, at best, a tortured reading of *Oncale*, and at worst, simply wrong!

Oncale requires that a plaintiff must prove that the harasser harassed the plaintiff because of her sex. Thus, a bisexual who propositions both men and women does not violate the law. But, a "heterosexual" who decides to proposition a subordinate of the same sex because of, for example, a desire to "experiment" with a same-sex sexual encounter, would violate the law even if, like the alleged harasser in *Hawkins*, the supervisor lived with an opposite sex fiancé and had never had a homosexual experience.

Employers should know that the key element for plaintiffs is to prove that the conduct was because of sex and that the employee is free to prove such in any way that he or she can.

Dave Sherwyn is the director of the Cornell Institute for Hospitality Labor and Employment Relations. ■

Sexual harassment according to the EEOC

Sexual harassment cases continue to plague workplaces in the U.S. While the overall number of complaints filed with the Equal Employment Opportunity Commission have dropped slightly in the past four years, a higher percentage of those sexual harassment charges have been brought by men. These cases also lead to million of dollars each year in payouts to harassed employees. According to the EECO, sexual harassment can occur in a variety of ways, including the following circumstances:

- The victim, as well as the harasser, may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- The harasser's conduct must be unwelcome. ■

Casino gave employee ample time to complete FMLA forms

Employee alleged discrimination, retaliation for taking FMLA leave

Employers often provide their workers with ample time to complete Family and Medical Leave Act forms. In *Mathis v. Pinnacle Entertainment, Inc., et al.*, No. 11-2199 (W.D. La. 06/23/2014), a casino attempted to convince an employee to complete his paperwork for months before ultimately terminating his employment, and a later workers' compensation settlement between the company and the employee further secured the casino's motion for summary judgment.

John-Talmage Mathis began working as a player development coordinator for Boomtown Casino in March 2010. On April 12, 2011, he informed his supervisor that he had injured his back in a work-related accident and needed a few days off to rest. His supervisor notified Mathis by phone, and personal and business email, informing him that he would need to return to the casino to fill out an accident report about his injury no later than April 18. He did not fill out the paperwork, but claimed that he tried to meet with HR on April 17 — which was Easter Sunday — but that the director was not in the office.

Mathis did not return to work, and he was sent a letter on April 21 again urging him to come to the office to fill out the necessary paperwork. The letter also stated that if he did not contact the casino by May 1, that the company would consider his continued absence as a voluntary resignation. On May 5, the casino sent a certified letter to Mathis informing him that if he did not respond by May 13, that his employment with Boomtown would terminate. On May 13, Mathis contacted Boomtown and requested FMLA leave. He was told that if he wished to use leave that he would need to return completed FMLA medical certification. HR both emailed and mailed the necessary forms, but Mathis never returned to work or submitted completed forms.

On June 6, Boomtown terminated his employment. Later, Mathis did fill out a worker's compensation claim regarding his injury, and he settled that claim with the casino.

Mathis claimed that he was discriminated and retaliated against for requesting FMLA leave, and further argued that Boomtown employees interfered with his attempts to take FMLA leave.

Agreement precluded FMLA claims

The court in *Mathis v. Pinnacle Entertainment* employee noted that the agreement between the casino and employee John-Talmage Mathis — signed as part of the settlement of Mathis' workers' compensation claims — unambiguously covered Family and Medical Leave Act charges.

The court noted that the agreement clearly stated that Mathis agreed to "a compromise and full settlement of ... any and all causes and rights of action whatsoever that [Mathis] may or might have ... under the Louisiana Worker's Compensation Law ... and any and all other laws in any way resulting from or to result from the accidents that [Mathis] complains of herein and any and all other accidents sustained by [Mathis] in the past arising out of or occurring during the course of his employment with [Boomtown Casino] ..." ■

Boomtown argued that Mathis settled his FMLA discrimination and retaliation claims in connection with the workers' comp settlement offered by the company. While the settlement gives leave for Mathis to pursue Equal Employment Opportunity Commission claims against the company, the court held that the settlement language unambiguously covered FMLA charges.

The court held that there was no question that the language in the contract was broad enough to cover Mathis' FMLA claims. Even assuming that Mathis intended the words "unemployment claims" to refer to the FMLA claims, the court held that the unambiguous language of the contract nullifies this argument. Because the language of the compromise clearly and explicitly expresses the intent of the parties to settle Mathis' FMLA claims against Boomtown, the court said, his claims were dismissed.

Even if the settlement did not prohibit FMLA claims, the court held that Mathis failed to show that he was discriminated or retaliated against under the FMLA. The court noted that Boomtown presented legitimate, nondiscriminatory reasons for his termination — the fact that he was absent for two months while never submitting the necessary FMLA forms. Although he implied that Boomtown failed to follow the FMLA when it terminated him, the court noted that Mathis offered no evidence to support his arguments. ■

New Jersey settles price gouging suit with hotel franchisee

Tapah LLC, the operator of the Comfort Suites Mahwah, has agreed to pay $110,000 to resolve the a lawsuit filed by the State of New Jersey, alleging that the hotel engaged in 473 instances of unlawful price gouging in the aftermath of Superstorm Sandy.

"This hotel allegedly violated New Jersey's price gouging law nearly 500 times during the first 12 days of the Superstorm Sandy state of emergency, when desperate families had to flee their homes and seek new shelter," Acting Attorney General John J. Hoffman said.

Comfort Suites Mahwah, at 220 Route 17, will pay $110,000 including $17,449 in consumer restitution, $47,600 in civil penalties, and $44,941 in reimbursement of the State's attorneys' fees and investigative costs. An additional $35,000 in civil penalties is suspended but will become payable if the business violates terms of the settlement within one year.

As alleged in the State's complaint, filed in November 2012, Comfort Suites Mahwah raised its room rates to various excessive amounts immediately after Gov. Chris Christie declared a state of emergency in advance of Sandy's landfall. From Oct. 27 through Nov. 7, 2012, the hotel allegedly engaged in 473 instances of unlawful price gouging. In some instances, the hotel allegedly charged more than $100 in excess of the price increases that would have been allowed under New Jersey's price gouging statute. ■

New guidance may impact employer pregnancy accommodations

Accommodating pregnancy in the workplace may get a bit more complicated, thanks to the Equal Employment Opportunity Commission's new Enforcement Guidance on Pregnancy Discrimination.

"The EEOC's guidance is groundbreaking, and its impact will affect the manner in which employers provide accommodations to their employees," said Jeff Nowak, cochair of the Labor and Employment Practice Group at Chicago law firm Franczek Radelet P.C. "Due to the EEOC's continued scrutiny and enforcement focus on pregnancy discrimination, and the agency's broad interpretation of employers' obligations under federal law, employers are well-advised to review their accommodation policies and practices as soon as possible to minimize exposure to pregnancy discrimination claims."

While the number of pregnancy discrimination claims remains small compared to other Title VII discrimination charges, these complaints still cost employers in the U.S. millions each year.

The EEOC said it chose to update its guidance to better help employers comply with the Pregnancy Discrimination Act and the Americans with Disabilities Act.

"Pregnancy is not a justification for excluding women from jobs that they are qualified to perform, and it cannot be a basis for denying employment or treating women less favorably than coworkers similar in their ability or inability to work," said EEOC Chair Jacqueline A. Berrien. "Despite much progress, we continue to see a significant number of charges alleging pregnancy discrimination, and our investigations have revealed the persistence of overt pregnancy discrimination, as well as the emergence of more subtle discriminatory practices. "

The guidance explains that employers need to essentially treat pregnant women with pregnancy-related medical issues as they would someone considered disabled under the ADA. The guidance states that an employer "is required under Title VII to treat an employee temporarily unable to perform the functions of her job because of her pregnancy-related condition in the same manner as it treats other employees similar in their ability or inability to work, whether by providing modified tasks, alternative assignments, or fringe benefits such as disability leave and leave without pay." The guidance also includes information on providing parental leave, and warns employers that leave must be provided equally to similarly situated men and women.

"This is serious stuff," said Nowak, "and employers should heed the EEOC's Guidance, unless the Supreme Court tells us otherwise — a proclamation which may come by June 2015." ■

The Pregnancy Discrimination Act

The Pregnancy Discrimination Act requries that employers treat women affected by pregnancy, childbirth, or related medical conditions in the same manner as other applicants or employees who are similar in their ability or inability to work, and provides guidance for the following:

- **Current pregnancy.** Under the PDA, an employer cannot fire, refuse to hire, demote, or take any other adverse action against a woman if pregnancy, childbirth, or a related medical condition was a motivating factor in the adverse employment action. This is true even if the employer believes it is acting in the employee's best interest.
- **Past Pregnancy.** An employer may not discriminate against an employee or applicant based on a past pregnancy or pregnancy-related medical condition or childbirth. For example, an employer may not fire a woman because of pregnancy during or at the end of her maternity leave.
- **Potential Pregnancy.** An employer may not discriminate based on an employee's intention or potential to become pregnant. For example, an employer may not exclude a woman from a job involving processing certain chemicals out of concern that exposure would be harmful to a fetus if the employee became pregnant. Concerns about risks to a pregnant employee or her fetus will rarely, if ever, justify sex-specific job restrictions for a woman of childbearing capacity.
- **Medical Condition Related to Pregnancy or Childbirth.** An employer may not discriminate against an employee because of a medical condition related to pregnancy and must treat the employee the same as others who are similar in their ability or inability to work but are not affected by pregnancy, childbirth, or related medical conditions. For example, under the PDA, since lactation is a medical condition related to pregnancy, an employer may not discriminate against an employee because of her breastfeeding schedule.

For more information, visit www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm. ■