



Weekly Wright Report (8/28/17)

LABOR LAW

Leveraging “Sext” Messages to Maintain Employment? Not so Fast...

In *Trey Harlin, P.C.*, 16-CA-171972 (July 1, 2017), an employer was found not to have violated the National Labor Relations Act when it fired an employee who shared with colleagues sexually suggestive text messages sent from a supervisor. When she showed the messages to coworkers, the employee claimed she could never be fired because she could use the texts as evidence against her supervisor. The Administrative Law Judge disagreed, finding that although complaints to colleagues about sexual harassment can constitute protected concerted activity, the fired employee did not engage in truly “concerted” activity because she never asked for help from colleagues and never suggested they engage in any sort of group response.

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GOVERNMENT CONTRACTING

A Picture is Worth a Thousand Words... or a Thousand Rocks

The Civilian Board of Contract Appeals in *Tucci & Sons, Inc. v. Dept. of Transportation*, denied the contractor’s appeal finding that unseen subsurface boulders were not a differing site condition. Relying on more than 100 photographs contained in the bid solicitation that showed rocks, cobbles, and boulders in the immediate vicinity of the road, the Board reasoned that “[t]he photographs clearly establish that boulders and bedrock should be expected in undisturbed native material at Mount Rainer National Park.” The Board also found that the contractor “was aware or should have been aware from the surrounding site conditions that it might encounter boulders in the undisturbed native material under the pavement” and that “the possibility of excavating rock was far from remote; in fact, it was obvious and apparent.” Ask Don dwalsh@wcslaw.com



EMPLOYMENT LAW

Discrimination Alleged by New Fathers Over Parental Leave

Sometimes, despite the best of intentions, unintended consequences occur when a new policy is rolled out to employees. In a recent charge brought by the EEOC, it is supporting a male employee of J.P. Morgan Chase & Company (JPMC) who has accused his employer of discrimination under federal and state law because the company denies fathers paid parental leave on the same terms as mothers. According to the charge, JPMC permits new mothers up to 16 weeks of paid parental leave while new fathers are eligible for only 2 weeks of paid parental leave. According to the charge, this contrast in paid benefits results from gender stereotyping and violates the law.

Many progressive employers have offered paternity leave but failed to recognize that the actual leave benefits offered are different between the two genders. A popular policy permits mothers to claim short term disability benefits with the employers making up the difference between the short term disability payments and the wages which would otherwise be paid once the mother returns to work. The same repayment of the wage shortfall for returning mothers is generally not offered to fathers electing to take paternity leave for the same period creating arguments of discrimination against males who desire to take paternity leave.

Employers are cautioned to check the legality before drafting and implementing maternity and paternity policies. Ask Don dwalsh@wcslaw.com or Steve skaufman@wcslaw.com