



LEGAL UPDATE
OCTOBER 6, 2020

Margo Ely,
Executive
Director



McAllister v. Illinois Workers Compensation Commission, Illinois Supreme Court

- Sous-chef injured knee when he stood up from kneeling position and he felt a pop. He was kneeling on both knees in the walk-in cooler to find a pan of carrots for a co-worker.
- The Illinois Supreme Court reversed and found the injury compensable.
- The new test for analyzing whether an injury “arises out of” a claimant’s employment is now: if the common bodily movement resulting in an injury had its origin in some risks connected with, or incidental to, employment so as to create a causal connection between the employment and the accidental injury.
- This holding overrules prior cases requiring a claimant who is injured performing job duties involving common bodily movements or routine everyday activities has to also show that he has to engage in these activities to a greater extent than the general public.





Better Government Association v. Chicago, Illinois Appellate Court

Holding: Communications that pertain to public business from officials' personal accounts are subject to FOIA.

“If a department head can deprive the citizens of their right to know what his department is up to by the simple expedient of maintaining his department emails on an account in another domain, that purpose [right to be informed] is hardly served.”

City just has to provide affidavits from officials that no responsive communications exist.

“Officials can also avoid any personal account disclosure in the future by simply refraining from the use of personal accounts to conduct public business.”

Kurtzhals v. County of Dunn, 7th Circuit

- Police officer “if you call me a liar again, we are going to take it outside.”
- Administrative Leave and ordered to undergo fitness for duty evaluation
- Prior PTSD diagnosis
- ADA Case
- Adverse Employment Action: “When overtime pay or premium pay is a significant and expected part of an employee’s annual earnings, denial of such pay may constitute an adverse employment action.”



Kurtzhals v. County of Dunn, 7th Circuit

- Fitness for Duty Exams
 - “An examination is job-related and consistent with business necessity when an employer has a reasonable belief based on objective evidence that a medical condition will impair an employee’s ability to perform essential job functions or that the employee will pose a threat due to a medical condition.”
- For Police Officers in particular
 - “Because he was a police officer and responsible for public safety, his well-being was essential not only to his safety but to the public at large; thus, the Department had a particularly compelling interest in assuring that he was both physically and mentally fit to perform his duties.”

Kurtzhals v. County of Dunn, 7th Circuit

- “In any case where a police department reasonably perceives an officer to be even mildly paranoid, hostile or oppositional, a fitness for duty examination is job related and consistent with business necessity.”
- “It was entirely reasonable, and even responsible, for the police department to evaluate the officer’s fitness for duty once it learned that he was experiencing difficulties with his mental health.”
- Held: Requiring fitness for duty was not an ADA violation.



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First Amendment Free Speech Employment Cases

- Plaintiff must show that he spoke (1) as a citizen (2) on a matter of public concern
- “When public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.”
- “Police officers’ internal reports of fellow officers’ misconduct do not qualify as citizen speech for purposes of the First Amendment.”
Selmani v. Bartlett.





First Amendment Free Speech Employment Cases

Adams v. Board of Education of Harvey, Illinois Appellate Court

Superintendent sought to have an audit of school finances. Board members were not happy. One told her “you’re itching for an ass-kicking.”

7th Circuit found her speech was protected as a legitimate subject of public concern. “The members are elected officials, whose constituents could be influenced by news that one of their representatives proposed to substitute violence for the normal process of voting. And a potential for physical altercations between public officials (the superintendent and an elected member) implies that an important public institution was not working properly.”



Hanson v. Levan, 7th Circuit

- First Amendment forbids government officials from discharging employees based on their political affiliation.
- Unless political affiliation is an appropriate job requirement:
 - When the position authorizes, either directly or indirectly, meaningful input into government decision making on issues where there is room for principled disagreement on goals or their implementation

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Kotaska v. Federal Express, 7th Circuit



The Importance of Essential Functions in Job Descriptions

Employee with shoulder injury had permanent restrictions and could not lift 75 pounds above head. She was terminated and filed an ADA lawsuit.

Job description provided essential function is the ability to lift up to 75 pounds, but did not specify: up to waist, above head, etc.

Majority ruled that the Plaintiff has the burden to prove essential job functions

Dissent points out that there is a split in the Circuits on the issue and that employers should have the burden to prove essential job functions, stating, “if courts are to rely on employers’ job descriptions and judgment, employers must describe the essential functions with enough specificity to tell the employee and courts what the job entails and, in ADA litigation, what the employee must show to establish that she can do the job.”

Obesity and the ADA, 7th Circuit

- Richardson v. CTA – obesity alone is not a physical impairment under the ADA; must have evidence that the obesity is caused by an underlying physiological disorder or condition.
- Shell v. BNSF – the ADA's regarded-as provision does not cover a situation where an employer views an applicant as at risk for developing a qualifying disability in the future.





The Value of Performance Reviews

Stelter v. Wisconsin Physicians Service Insurance Corporation, 7th Circuit.

Plaintiff filed ADA case after she was terminated following a back injury. Summary judgment for employer because the manager had raised performance concerns in prior evaluations.

City of Chicago v. FOP, Illinois Supreme Court

- Provision in collective bargaining agreement requiring destruction of disciplinary records is void against public policy.



Esser v. City of Peoria, Illinois Appellate Court

- City can identify what health plan is “basic” for purposes of Public Safety Employee Benefits Act and can require employee to pay difference in price for any more expensive plan.



7th Circuit Deadly Force Cases

- 5 Cases in 2020 all rule in favor of police officers
- “When an officer believes that a suspect’s actions place him, his partner, or those in the immediate vicinity in imminent danger of death or serious bodily injury, the officer can reasonably exercise the use of deadly force.”
- “If the suspect threatens the officer with a weapon, deadly force may be used. And police officers may resort to deadly force even if a less deadly alternative is available to the officers.”



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Bostock v. Clayton County, Georgia
United States Supreme Court

Title VII's prohibition against sex discrimination
includes homosexuality and transgender status

Salary History Public Act 101-0177

- Amendment to the Equal Pay Act prohibits employers from asking applicants about salary history
- Employers cannot prohibit employees from discussing wages and benefits
- Applicants can voluntarily disclose salary history
- Plaintiffs can recover damages and attorneys' fees

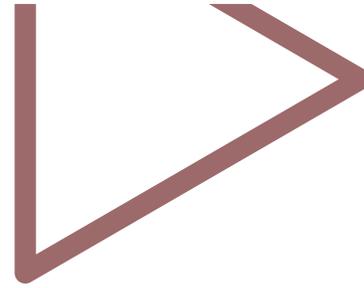


Workplace Transparency Act

- Mandatory Sex Harassment Training
- Effective January 1, 2020, all Illinois employers must train all employees on harassment prevention annually. At a minimum, the training must provide an explanation of what constitutes harassment under Illinois state law, provide examples of harassment, summarize state and federal laws and remedies for sexual harassment, and summarize the responsibilities of employers in recognizing, investigating, preventing, and taking corrective measures to prevent harassment. The Illinois Department of Human Rights created a training available for all.



THANK YOU!





For more information
please contact...

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