EEOC charges: Six steps to take

by Maureen Minehan

It is a letter no one ever likes to receive—a charge form from the Equal Employment Opportunity Commission (EEOC) alleging that you violated federal law. If you find one in your mailbox, consider the following six steps.

Consult with counsel

Jill Cheskes, a partner at Smith Amundsen LLC in Chicago, says the first step is to obtain legal advice from employment law experts. “There is no EEOC requirement that an attorney be involved, but it makes business sense and better protects the company,” she says.

Merrily Archer, of counsel at Fisher Phillips LLP in Denver, and a former EEOC attorney, agrees that experience matters. “A lot of employers want to handle it themselves to save money. That’s understandable, but this is one of those things where you can miss an issue and inadvertently walk into something even bigger.”

The EEOC is very focused on systemic discrimination right now. Unless you understand the ramifications, innocently answering certain questions can unintentionally open the door to a broader investigation. Certain answers to questions such as: ‘Tell me more about the policy or practice. Does it apply to all positions? Across all geographic locations?’ could change a single charge into a larger systemic discrimination investigation,” Archer says.

Shut down the shredder

A second step is to determine the scope of the charge and the range of documents that must be retained until the charge is resolved. In general, once a charge has been received, the employer must retain all relevant documentation, including electronic records. “Sanctions by courts can be severe for companies that destroy relevant information, even if it was done pursuant to the company’s normal policy on record-keeping,” Cheskes says.

Get moving

Compliance with charge deadlines also is critical. “Failure to respond to all the inquiries by the relevant dates could result in defaults being entered against the company that may be difficult, if not impossible, to vacate,” Cheskes warns.
Consider mediation

“Mediation is a non-binding, no cost option that is offered by the EEOC and many state agencies on these cases prior to investigation. In my opinion, many companies instinctively reject this option because they feel they did nothing wrong. Even cases without merit can cost hundreds of thousands of dollars to defend. Thus, an early opportunity to get a case resolved for a very small sum should be explored,” Cheskes says.

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“The mediation process is one of the most successful programs the EEOC has created. It provides a good opportunity to figure out what the employee wants. In addition, if the charging party has a smoking gun, wouldn’t you rather know that now before you invest a lot of money in legal fees?” Archer asks.

Stay on message

“Too often, companies try and include every bad thing the employee ever did to justify their actions thinking it will bolster their case. Invariably, this backfires and creates potential liability where perhaps none existed,” Cheskes says.

Prevent retaliation

Finally, upon receipt of a charge, act quickly to prevent retaliation. “Nothing makes an otherwise manageable problem more unmanageable than a retaliation claim. Many times the underlying claim is squishy and the retaliation claim is easier to prove. It’s critical to counsel managers that there can’t be any retaliation,” Archer says.

The bottom line

If you receive an EEOC charge form, quickly consult with legal counsel to set a response plan into motion that complies with legal requirements. Even if the charge seems unjustified, the steps taken in response to it can increase the odds of liability if they are inappropriate.

Maureen Minehan is a Washington, D.C.-based freelance business writer specializing in human-resource management.

Practically Speaking: If an EEOC charge against your organization surfaces, be sure to:

1. Consult with counsel;
2. preserve documents that must be retained until the matter is resolved;
3. comply with the applicable deadlines for responding to the charge;
4. consider mediation, a non-binding, no cost option;
5. stay on message; and
6. prevent retaliation.

Sexual Discrimination

“Gender stereotyping case” makes its way to the Third Circuit

Citation: Prowel v. Wise Business Forms, Inc., 107 Fair Empl. Prac. Cas. (BNA) 1, 2009 WL 2634646 (3d Cir. 2009)

The Third U.S. Circuit Court of Appeals has jurisdiction over Delaware, New Jersey, Pennsylvania, and the Virgin Islands.
The Third U.S. Circuit Court of Appeals ruled recently on whether a gay man had a valid claim that he was subject to “gender stereotyping” discrimination. The court found there were issues of fact as to whether the alleged harassment that took place was due to the alleged victim’s effeminacy and status as a gay man.

The facts

Brian Prowel started working for Wise Business Forms Inc. (Wise), a producer and distributor of business forms, in 1991. During his employment with Wise, Prowel operated a “nale encoder,” which encoded numbers on Wise’s business forms.

After 13 years on the job, Wise told Prowel that it was laying him off for lack of work. After he was terminated, Prowel filed suit against Wise, claiming that he had been subjected to harassment and retaliation because of his sex. Specifically, Prowel, who identified himself as an effeminate gay man, said that he did not fit in with Wise’s macho workforce. He also claimed that his coworkers reacted negatively him and that they called him “Rosebud” and made fun of how he walked.

Prowel recounted the alleged treatment to which he was subjected when filing his lawsuit. He claimed that in November 1997, the taunting got worse when a “man-seeking-man” ad was left at his workstation with a note reading “Why don’t you give him a call, big boy.” Despite Prowel’s report to management about the incident, the alleged perpetrator was not identified.

In the seven years that followed this incident, Prowel alleged, coworkers continued to refer to him as “Rosebud” and “Princess.” In the year or two leading up to his termination, Prowel claimed that he found a pink, light-up feather tiara and lubricant jelly on his nale encoder. After complaining to a supervisor, Prowel claimed that he heard a coworker say “I hate him. They should shoot all the fags.” After this incident, Prowel claimed that messages indicating that he had AIDS and had engaged in sexual relations with male coworkers appeared in the company restroom. At Prowel’s prompting, Wise repainted the bathroom.

In addition to claiming that he was harassed because of his sex, Prowel also claimed that he was discriminated against because of his religion. He specifically contended that his conduct did not conform to the Wise’s religious beliefs, which he said consisted of the notion that “a man should not lay with another man.”

He contended that in 2004 he received notes on his nale encoder stating that he was a sinner and would “burn in hell.” Prowel attributed these notes and comments to a Christian employee who refused to speak to him. Another coworker stated that he did not approve of how Prowel lived his life. Prowel testified that this individual brought religious pamphlets to work that stated “the end is coming” and “have you come clean with your maker?”

Prowel alleged that the harassment he endured caused him to experience severe stress that caused him to vomit. Around that time, he considered suing Wise and told some coworkers about his plan. Those employees complained to Wise that he was bothering them.

After Prowel was terminated, he filed suit against Wise, claiming it was liable for harassment based on his sex and religion and retaliation, in violation of Title VII of the Civil Rights Act of 1964 (Title VII). The lower court granted Wise’s request for judgment without a trial, finding that Prowel’s suit was merely a claim for sexual orientation discrimination which was not cognizable under Title VII and that his religious discrimination claim failed for the same reason. The court, however, found that Prowel had a good-faith belief that he had engaged in protected treatment to which he was subjected because of his sex and religion and retaliation, in violation of Title VII. The court, however, found that Prowel had a good-faith belief that he had engaged in protected termination, Prowel filed suit against Wise, claiming it was liable for harassment based on his sex and religion and retaliation, in violation of Title VII of the Civil Rights Act of 1964 (Title VII).

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State Of The Law

Massachusetts

Harvard researchers say businesses are unprepared for H1N1 outbreak

Researchers at the Harvard School of Public Health (HSPH) in Boston have concluded that most businesses are not prepared for an H1N1 outbreak. In a survey of 1,000 companies nationwide, two-thirds of the respondents said they would not be able to operate business as usual if a flu outbreak hit their workplace and 50% of their workforce was out for two weeks. Eighty percent of those polled said they would expect severe ramifications if those workers had to be out of work for a month.

“Businesses need to start planning how to adjust their operations to account for greater absenteeism and to slow the spread of H1N1 in the workplace,” said Robert Blendon, professor of health policy and political analysis at HSPH.

This was the fourth in a series of surveys the HSPH conducted on how individuals and organizations are responding to the threat of an H1N1 outbreak. For more on the surveys, visit http://www.hsph.harvard.edu/news/press-releases/2009-releases/businesses-problems-maintaining-operations-significant-h1n1-flu-outbreak.html.

New York

Labor law amendment requiring employers to furnish new hires with information in writing going into effect

New York employers have an added obligation now that an amendment to the New York Labor Law is going into effect. New employees must receive in writing their rate of pay, the overtime rate of pay if the employee is classified as nonexempt, and their activity under Title VII, but that his belief was not objectively reasonable given that his complaint was actually based on sexual orientation discrimination. Prowel appealed.

Third Circuit weighs in

The lower court correctly relied on an earlier decision the Third Circuit had made in which it ruled that Title VII did not prohibit discrimination based on sexual orientation, the appeals court ruled. In that case—Bibby v. Philadelphia Coca Cola Bottling Co—a homosexual man was not able to proceed with his discrimination claim against his former employer because it appeared he had been harassed because of his sexual orientation, not his sex, and Congress had not included sexual orientation harassment in Title VII. The court also found, though, that employees could raise gender stereotyping claims if they could show that “the[ir] harasser was acting to punish [their] noncompliance with gender stereotypes.” In Bibby, the court explained, the employee did not prevail because he did not claim gender stereotyping had occurred. The present case was distinguishable from Bibby in that respect; thus, Bibby did not dictate the outcome of Prowel’s case. Instead, the court explained, it needed to consider “whether the record, when viewed in the light most favorable to Prowel, contain[ed] sufficient facts from which a reasonable jury could conclude that he was harassed and/or retaliated against ‘because of sex.’”

Here there was no dispute that Prowel was homosexual. “The difficult question, therefore, is whether the harassment he suffered at Wise was because of his homosexuality, his effeminacy, or both,” the court wrote.

While it was possible that the harassment was based on his sexual orientation and not his effeminacy, “this [did] not vitiate the possibility that Prowel was also harassed for his failure to conform to gender stereotypes,” the court found. Because both scenarios were plausible, Wise should not have been granted judgment without a trial.

The court found that Prowel brought forth evidence of harassment based on gender stereotypes. “He acknowledged that he has a high voice and walks in an effeminate manner. In contrast with the typical male at Wise, Prowel testified that he: did not curse and was very well-groomed; filed his nails instead of ripping them off with a utility knife; crossed his legs and had a tendency to shake his foot ‘the way a woman would sit,’” it wrote. His effeminate traits did not go unnoticed by his coworkers, who made comments about what he wore and the way he walked. When viewed in a light most favorable to Prowel, the facts presented constituted “sufficient evidence of gender stereotyping harassment—namely, Prowel was harassed because he did not conform to Wise’s vision of how a man should look, speak, and act—rather than harassment based solely on his sexual orientation,” the court ruled.

While it was possible that the harassment was based on his sexual orientation and not his effeminacy, “this [did] not vitiate the possibility that Prowel was also harassed for his failure to conform to gender stereotypes,” the court found. Because both scenarios were plausible, Wise should not have been granted judgment without a trial.

Religious harassment claim explored

Prowel asserted that he suffered religious harassment because he was a gay male and his status, according to several coworkers, was “considered to be contrary to being a good Christian.” “Prowel’s identification of this single ‘religious’ belief leads
ineluctably to the conclusion that he was harassed not ‘because of religion,’ but because of his sexual orientation,” the court ruled. Accordingly, the court concluded, the lower court correctly dismissed Prowel’s religious harassment claim.


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Case Note: To establish a valid Title VII religious harassment claim, a worker must show that:

- he or she was intentionally harassed because of his or her religion;
- the harassment was severe and pervasive and detrimentally affected him or her; and
- it would have had a similar effect on a reasonable person of the same religion in his or her position.

In addition, the claimant must show that the employer knew or should have known of the alleged harassment and failed to take appropriate measures to correct or prevent it.

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You Be The Judge

Is cab driver who claims he is an employee instead of contractor able to bring a class action against cab company?

The facts—A taxi company with a fleet of taxis leases out one of its cabs to a taxi driver from July 2002 to November 2004. The lease agreement the individual signs indicates that he is an independent contractor for the cab company. The individual, on behalf of class of workers, files suit against the cab company claiming he was wrongly classified as contractor. He contends that the cab company provides him with all the tools of the job, and that he does not have any “significant tools or instrumentalities of [his] own.” After all, he asserts, the cab company instructs him and the other drivers through its radio dispatch service as to when and where to pick up customers and on service, courtesy, personal appearance, the prices they can charge, the cleanliness of their taxis, etc. Other cab drivers, however, maintain that they, not the cab company, controls their activities.

The dilemma—Does the cab company exercise enough control over the cab drivers so they are really employees and not contractors? Should a court certify the case as a class action?

*Turn to page 8.*

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Family and Medical Leave

Worker on leave is terminated for making unauthorized purchases with company credit card

Citation: Daugherty v. Wabash Center, Inc., 15 Wage & Hour Cas. 2d (BNA) 365, 92 Empl. Prac. Dec. (CCH) P 43648, 2009 WL 2477640 (7th Cir. 2009)

The Seventh U.S. Circuit has jurisdiction over Illinois, Indiana, and Wisconsin.

In a case alleging that an employer discharged a worker in retaliation for taking unpaid leave, the Seventh Circuit ruled that an employer had not violated the FMLA when it discharged an athlete for making unauthorized purchases with a company credit card.

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Source: http://www.laborlawyers.com

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From The Hill

Big changes to FMLA being proposed on Capitol Hill

This year was a relatively big one for the Family and Medical Leave Act (FMLA), with the Department of Labor’s regulations on FMLA certifications and more taking effect this past January. But, there is talk on Capitol Hill of proposed legislation that could create much more of a stir.

In June, Rep. Lynn Woolsey, D.-Calif., introduced “The Balancing Act of 2009,” which seeks to amend the FMLA by turning it into a paid-leave statute. Rather than allowing workers to take 12 weeks of unpaid leave, the new law would require employers with 15 or more employees to pay workers for absences related to family, medical, or military exigency obligations, the law firm of Fisher & Phillips explained recently. In addition, the act would create a family and medical leave insurance fund to help compensate employees during their leave time. Employers and employees would be required to subsidize the fund by contributing a premium of 0.2% of employee earnings. The firm explained that if an employee earned an annual salary of around $50,000 he and his employer would each contribute approximately $100 per year.

The act would also affect the number of workers eligible to take family and medical leave. Currently the FMLA applies to full-time employees who have worked at least 1,250 hours in the preceding 12 months. This act would amend the FMLA so that part-time workers—that those accumulating 1,050 hours—could take paid leave.

Source: http://www.nixonpeabody.com
EEOC turns up the heat on UPS and Target for alleged disability discrimination

The Equal Employment Opportunity Commission (EEOC) has filed suit against United Parcel Service of America Inc. (UPS) and Target Stores Inc. (Target), alleging that they both violated the Americans with Disabilities Act (ADA) by how they handled requests for accommodation.

In the case against UPS, the federal agency claims that the parcel-delivery service denied Trudi Momsen, an administrative assistant at UPS, an additional medical leave after she returned to work following a bout with multiple sclerosis. Momsen, who had been on leave for 12 months, told UPS that she needed more time off due to a medication-related issue. The EEOC claims that rather than accommodating Momsen, UPS terminated her on the basis that she exceeded the company’s 12-month leave policy.

About the case, EEOC Chicago Regional Attorney John Hendrickson said, “One of the main goals of the ADA is to provide gainful employment to qualified individuals with disabilities. However, policies like this one at UPS, which set arbitrary deadlines for returning to work after medical treatment, unfairly keep disabled employees from working. Sometimes a simple conversation with the employee about what might be needed to return to work is all that is necessary to keep valued employees in their jobs.”

In the case against Target, the EEOC claims that the national retailer unlawfully denied a reasonable accommodation to an employee with multiple disability-based impairments and substantially reduced his work hours due to his medical conditions. The disabled worker, who had cerebral palsy and limited intellectual functioning, could not effectively communicate with others without the assistance of a job coach. His parents requested to have a job coach present at any meeting related to his job performance.

According to the agency, Target’s Foothill Ranch, California store failed to provide the requested accommodation for taking leave, in violation of the Family and Medical Leave Act (FMLA), and failed to reinstate him, the Seventh U.S. Circuit Court of Appeals affirmed the lower court’s decision to grant the employer judgment without a trial.

Michael Daugherty began working for Wabash Center Inc. (Wabash), a not-for-profit agency serving adults and children with developmental disabilities, in May 1999. Between 1999 and 2006, Daugherty was promoted from a maintenance assistant to director and then vice president of information technology. He always received “very good” or “excellent” performance reviews.

In 2006, Daugherty engaged in “email wars” with several other employees. He was issued a written reprimand for sending abusive emails and for his management style. Daugherty acknowledged his professional shortcomings, and, although he thought the written reprimand was unwarranted, he agreed with the substance of the complaints and even drafted his own corrective action plan. At that time, Daugherty learned that Wabash was revoking permission it granted for Daugherty to take a planned month-long vacation.

On June 19, Daugherty’s doctor wrote a note for him stating, “off work 2 weeks due to medical illness.” Daugherty’s application for FMLA leave did not mention a health condition but instead described personnel conflicts within the company, concluding: “I have been placed under a tremendous amount of stress with ... [Wabash Center]. I have requested [a] reorganization that would alleviate this stress. It was declined. My much needed vacation has been cancelled by [Wabash].” That afternoon, Wabash granted Daugherty’s request for two weeks off.

While Daugherty was out, Wabash learned some troubling information about his work performance. Specifically, it discovered that he had used a company credit card without its authorization to purchase a generator that was delivered to his home. Wabash discovered at least five other unauthorized purchases, and one that was shipped to “Daugherty’s Computers” at his home address.

On June 30, key emails were lost when Wabash’s server crashed. Outside experts brought in to restore the server discovered that Daugherty had failed to routinely back up the servers—this was one of his key responsibilities. The forensic experts also found that more than 5,000 files had been deleted from Daugherty’s computer on June 19.

On August 9, Wabash terminated Daugherty, citing his authoritarian management style, poor IT practices, failure to turn over keys, missing files, and violations of the purchasing protocols as the reasons for the firing.

After Daugherty filed suit claiming that Wabash fired him in violation of the FMLA, the lower court granted Wabash judgment without a trial. Daugherty appealed.

Failure to reinstate

Daugherty claimed that Wabash violated the FMLA by not reinstating him to his former position once his leave ended. He further contended that even if an employer discovered a reason to fire an employee during that employee’s FMLA leave, the employer had to reinstate the employee before firing him.

The court found that Wabash presented undisputed evidence that Daugherty’s conduct warranted his termination. He “had unprofessional email exchanges with other employees, was abusive to his staff, purchased items in violation of company policy, refused to return keys and disclose passwords, and deleted company files from his workstation,” it wrote, adding that there was no genuine dispute over his entitlement to reinstatement. “[E]ven if he had never taken leave, he would not be entitled to keep his job,” the court found.
Did Wabash fire Daugherty for taking leave?

To establish a valid retaliation claim, Daugherty needed to show that he engaged in a protected activity and that the adverse employment action he was subjected to was causally related to that activity. Here, Wabash’s evidence showed that it fired Daugherty for misconduct. Daugherty claimed that his misconduct did not justify the decision to terminate him and that the timing of the termination in relation to his FMLA-protected absence was the real reason for Wabash’s decision.

The court found that Wabash presented undisputed evidence that Daugherty’s conduct warranted his termination. He “had unprofessional email exchanges with other employees, was abusive to his staff, purchased items in violation of company policy, refused to return keys and disclose passwords, and deleted company files from his workstation,” it wrote, adding that there was no genuine dispute over his entitlement to reinstatement. “[E]ven if he had never taken leave, he would not be entitled to keep his job,” the court found.

The court did not buy Daugherty’s argument. “He points to no company policy or past practice violated by Wabash when it fired him after discovering additional evidence of his sub-par performance and potential sabotage,” it wrote, concluding that there was not any dispute over Wabash’s motives.

The Bottom Line: The FMLA states, “Because the FMLA only entitles employees who take FMLA leave to the same position they would have otherwise been entitled to, an employer may terminate employees, even when on leave, if the employer discovers misconduct that would justify termination had leave not been taken.”

Worker claims she is placed on involuntary leave in retaliation for using FMLA leave in the past

Citation: Hunter v. Valley View Local Schools, 15 Wage & Hour Cas. 2d (BNA) 321, 2009 WL 2601863 (6th Cir. 2009)

The Sixth U.S. Circuit has jurisdiction over Kentucky, Michigan, Ohio, and Tennessee.

In a case alleging that an employer retaliated against a woman who took Family and Medical Leave Act (FMLA) leave by placing her on involuntary leave, the Sixth U.S. Circuit Court of Appeals has ruled that the employer was not entitled to judgment without a trial.

The facts

Eunice Hunter began working as a full-time night custodian for the Valley View Local Schools (VVLS) in 1999. Her duties included sweeping, mopping floors, waxing, emptying and cleaning waste receptacles, cleaning student desks, polishing furniture, lifting/moving furniture, moving boxes, and performing minor repairs.

In June 2003, Hunter was involved in a car accident. Injuries to her right hand, arm, and foot caused nerve damage. The accident also aggravated arthritis in her right knee.

Hunter was out of work for two months while she underwent right-foot surgery. She returned to work in August 2003 but was limited to working just four hours per day until she resumed her full-time duties in November of that year.

One EEOC attorney added that Target’s actions denied this individual an equal opportunity to succeed in the workplace. “Target’s failure to provide a reasonable accommodation denied him equal benefits and privileges of employment. Despite his disabilities, the employee in this case was qualified and motivated to work,” said Anna Park, of the EEOC’s Los Angeles District Office.

Remember: If a request for accommodation is reasonable, it should be granted. Also, just because an employee does not request an accommodation does not mean that you should not offer one. If you observe someone who is disabled within the meaning of the ADA having difficulty performing one or more of the essential functions of his or her job, you have a duty, under the ADA, to inquire further into whether they may need an accommodation.

Source: http://www.eeoc.gov
Months later, Hunter’s doctor placed her on a reduced schedule of 20 hours per week for 30 days. Hunter then had two separate surgeries, requiring a 90-day leave.

Hunter returned to work in July 2004, beginning on a reduced schedule and resuming full-time work after one month. Hunter worked full time from August 2004 until June 2005 when she underwent knee surgery requiring a 45-day leave. According to Hunter, she scheduled her surgeries in the summer because it was important for her to be at work during the school year.

In August 2005, Hunter returned to work with the permanent restrictions of no lifting, pushing, or pulling more than 10 pounds; and no climbing stairs or ladders. The following month, VVLS’ superintendent and the school principal met with Hunter to inform her that she was being placed on involuntary, unpaid leave effective the following month. In a letter dated October 3, 2005, she was told that “as of October 14, 2005, you are hereby placed on unpaid medical leave not to exceed one (1) year based on your doctor’s restrictions limiting your ability to perform your job and excessive absenteeism for the past four (4) years.”

The lawsuit

Hunter filed suit against VVLS, claiming that the decision to place her on involuntary leave was based on its retaliatory motives. The lower court heard evidence from both sides and gave weight to deposition testimony from the superintendent indicating that Hunter’s use of FMLA leave was one of two reasons she had been placed on involuntary leave. The court found that this testimony constituted direct evidence that VVLS impermissibly considered Hunter’s use of FMLA leave. However, the court still granted VVLS judgment as a matter of law because VVLS would have placed Hunter on involuntary leave in any event due to her permanent medical restrictions, Hunter appealed.

In reversing the lower court’s ruling, the Sixth Circuit found that the superintendent’s testimony was the linchpin at this stage of the litigation. “[Her] deposition testimony completely undermines [VVLS’] protestations that no issue of fact remains as to whether it would have made the same decision regarding Hunter even if she had not taken any FMLA leave,” the court concluded. It would be up to a fact finder to determine whether, despite the direct deposition testimony, VVLS had a retaliatory motive for its actions or whether it would have taken the action against Hunter regardless of whether she had previously taken FMLA leave.

Case Note: While the case was pending, VVLS extended Hunter’s involuntary leave for an additional year. In February 2007, Hunter’s doctor reviewed a list of her job responsibilities and indicated that she could perform them, with the exception of climbing on ladders to change light bulbs. Hunter was allowed to return to VVLS, where she continues to work. The court sent this case back for further review because there were genuine issues of material fact as to whether Hunter’s prior use of FMLA leave for the injuries to her right hand, arm, and foot, and related surgeries was a motivating factor in VVLS’ decision to place her on involuntary leave. The key question that needed to be answered was whether it would have placed her on involuntary leave regardless of her prior use of FMLA leave.

You Be The Judge

Is cab driver who claims he is an employee instead of contractor able to bring a class action against cab company?

Continued from page 5.

The jury’s in—The court most likely would not certify the case as a class action. To certify a class action, there needs to be a “a predominance of common issues of fact and law.” Here, a class action probably would not be the best way to address each potential class members’ claims, the court ruled in the case on which this scenario is based, because the other cab drivers’ assertions that the cab company lacked the “the requisite control to make them employees rather than independent contractors ... tend[ed] to show a lack of class-wide damages.” The bottom line in this case: The cab driver would probably have had more success pursuing his claim individually rather than as a class action.

That said, class actions alleging that an employer wrongly classified workers as independent contractors to avoid state and federal wage-and-hour obligations requiring overtime compensation can be common. A recently released report published by the State Bar of Wisconsin and authored by Thomas Krukowski, Esq. of the law firm Krukowski & Costello, S.C., noted that class action and collective lawsuits in employment-related litigation are on the rise, with employees seeking proper pay and fair treatment from their employers. To download the report, visit http://www.krukowski.com/graphics/TPKWIILawyer8-09.pdf.