

LEGAL UPDATE

**WCPA Annual Conference
Green Bay, Wisconsin**

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**James R. Korom
von Briesen, Purtell & Roper, s.c.
411 East Wisconsin Avenue, Suite 700
Milwaukee, Wisconsin 53202**

**(414) 276-1122
(800) 622-0607**

(414) 287-1231 (Mr. Korom's direct line)

I. ADA Cases

- A. *Contracts, Metals and Welding, Inc.*, 110 Lab. Arb. (BNA) 673 (1998) ADA obligations vs. Seniority rights.

- B. *Dalton v. SIA, Inc.*, 141 F.3d 667 (7th Cir. 1998) Reasonable Accommodations and temporary light duty jobs.

- C. *Morrow v. Jacksonville*, 941 F. Supp. 816 (E.D. Ark. 1996) Weight problems and the definition of disability.

II. Discipline Cases

- A. *Heil v. Santoro*, No. 97-7368, 1998 WL 324175 (2nd Cir. Jun. 3, 1998). Refusal to answer questions is insubordination subject to discipline.

- B. *Cragg v. City of Osawatomie, KS*, 143 F.3d 1343 (10th Cir. 1998) Free speech, lawn signs and discipline.

- C. *Younglove v. City of Oak Creek Fire and Police Commission*, 217 Wis. 2d 133, 579 N.W.2d 294 (Ct. App. 1998) Deference to be given to decision of PFC.

III. FLSA Developments

- A. *West v. Anne Arundel Co., MD*, 137 F.3d 752 (4th Cir. 1998) Section 7(k) exemption and application to EMTs.

- B. *Imada v. City of Hercules*, 138 F.3d 1294 (9th Cir. 1998) Travel time to off-site training not compensable.

- C. Use of part-time employees otherwise working for the city. 29 CFR § 553.30.

IV. Open Records Update

- A. *Woznicki v. Erickson*, 202 Wis. 2d 178, 549 N.W. 2d 699 (1996).

- B. *MTEA v. Milw. Bd. of School Directors*, No. 97-0308, 1998 WL 234193 (Wis. Ct. App. May 12, 1998).

- C. *Klein v. Wisconsin Resource Center*, 218 Wis. 2d 487, ___N.W. 2d___(Ct. App. 1998).

V. Discrimination Cases

- A. Supreme Court decisions on sexual harassment.

1. *Faragher v. Boca Raton*, ___U.S.___, 141 L.Ed. 2d 662, 118 S. Ct. 2275 (1998).
 2. *Burlington Industries v. Ellerth*, ___U.S.___, 141 L.Ed. 2d 734, 118 S. Ct. 2257 (1998).
- B. Same Sex Harassment. *Oncale v. Sundowner Offshore Services, Inc.*, ___U.S.___, 140 L. Ed. 2d 201, 118 S. Ct. 998 (1998).
- C. *Cowan v. Prudential*, 141 F. 3d 751 (7th Cir. 1998) Boorish behavior compared to sexual harassment.
- D. *Liebowitz v. New York City Transit Authority*, No. 95-CV-3860, 1998 WL 229817, (E.D.N.Y. May 5, 1998) Hostile environment.
- E. *Taylor v. Metzger*, 706 A.2d 685 (N.J. Sup. Ct. 1998) Single incident racial epithet by supervisor is hostile. Compare to *Jones v. Clinton*

F. *Eleby v. LIRC*, Case No. 97-CV-2478 (Dane Co. Cir. Ct. April 8, 1998) Equal treatment and disparate impact.

G. Final Rules on ADEA waivers issued. 29 CFR Part 1625.

VI. General

A. *Miller v. Wal-Mart*, No. 96-2529, 1998 WL 333943 (Wis. S. Ct. Jun. 24, 1998). Negligent training now a tort in Wisconsin.

B. *AFSCME v. WERC*, 217 Wis. 2d 602, 579 N.W. 2d 59 (Ct. App. 1998) Interest Arbitration for newly-created positions.

C. *Kelley v. Crosfield Catalysts*, 135 F.3d 1202 (7th Cir. 1998) FMLA leave allowed for custody hearing.

D. OJP Block Grant program funds can be reduced if health insurance benefits lost after injury resulting from hot pursuit of responding to emergency. Section 615 of H.R. 2267.

E. Mandatory rest period after Military Leave. 38 USCS § 4312(e)(1).