NEVADA LAW BULLETIN

PSST..... PSST.... HAVE YOU HEARD THE LATEST ABOUT OFFICE GOSSIP?

By Rebecca Bruch, Esq.

Over the years you have heard us speak at harassment trainings about the perils of office gossip and why it contributes to problems and morale at work. While the concept is intuitive, it is difficult to articulate the legal jeopardy that is created when an environment rife with gossip goes unchecked.

For legal exposure, it takes more than "They're mean to me" to carry any weight with the EEOC or a court. There has to be discrimination or harassment based on a protected category. On February 8, 2019, the Fourth Circuit ruled on the case of *Parker v. Reema Consulting Services*, and clearly addressed how office gossip plays out to create a Title VII claim for sexual harassment.

In December 2014, Ms. Parker was hired as an Inventory Control Clerk at Reema Consulting Services in Sterling, Virginia. She was then promoted to supervisory and specialist positions, with a final promotion to Assistant Operations Manager in March 2016. After the final promotion, a male coworker who had been hired at the same time and in the same position that had not been promoted started a rumor that Ms. Parker received these promotions because she was having an affair with a married male manager. The rumors resulted in Ms. Parker being treated with open hostility by other employees, including the employees she supervised.

Ms. Parker complained to the Program Manager about the mistreatment. The Program Manager responded to Ms. Parker by blaming her for the disruption in the workplace caused by the rumor. In addition, the employee who started the rumor filed a complaint against Ms. Parker, saying she was harassing him. She denied any such conduct.

Ms. Parker was called into a meeting with the Program Manager and human resources, she was given two written warnings: one for alleged harassment of the person spreading the rumors, and one for insubordination toward the Program Manager. Next, she was terminated after only two months as Assistant Operations Manager. No one else was disciplined. Ms. Parker filed a lawsuit, asserting a claim for sexual harassment and hostile work environment.

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OFFICE GOSSIP (cont'd)

The District Court dismissed the case, finding the harassment was not based on Ms. Parker's sex, which would violate Title VII, but was based on her alleged conduct, which was not protected under Title VII. On appeal, the Fourth Circuit reversed, finding that Ms. Parker had sufficiently alleged a claim under Title VII. Specifically, the Court held that Ms. Parker's harassment was based on gender because gossip linking a woman's advancement to her sexual exploits and not to her merit promulgates stereotypes about women.

The Court held:
"As alleged, the rumor was that Parker, a female subordinate, had sex with her male superior to obtain promotion, implying that Parker used her womanhood, rather than her merit, to obtain from a man, so seduced, a promotion. She plausibly invokes a deeply-rooted perception - one that unfortunately still persists - that generally women, not men, use sex to achieve success. And with this double standard, women, but not men, are susceptible to being labeled as 'sluts' or worse, prostitutes selling their bodies for gain."

In addition, the Court held that the harassment was actionable because the Program Manager participated in the circulation of the rumor and further acted on it by disciplining and firing Ms. Parker.

What is the lesson here? Nothing productive comes from gossip and rumors in the workplace. They have the power to detrimentally lower morale, distract from productivity, and lead to legal liability for the employer. A culture of discouraging gossip should be part of a philosophy at any workplace, included in training, and addressed as a part of discipline, if appropriate.

ETS News and Announcements

Erickson, Thorpe & Swainston, Ltd. is proud to announce its newest partner Charity Felts.

Did You Know?

Charity is a northern Nevada native, raised in Winnemucca.

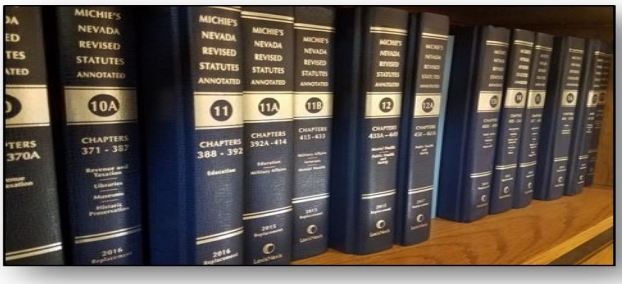
She represents insurers in Workers' Compensation matters and has more than 15 years experience working in Human Resources or supporting the Human Resources profession through her employer-side employment law practice.

Charity conducts workplace investigations for private and public employers and has completed the Association of Workplace Investigators™ Training Institute.

Charity's practice includes policy development, employee handbook creation and revision, and training on a variety of employment law topics.

PERSONAL INJURY INSURANCE POINTERS

By John Boyden, Esq.



Auto accident cases are the mainstay for many attorneys. This article provides information on two subjects for these attorneys and their clients when navigating an auto accident claim. Irrespective of whether you are representing the injured party, the potentially at fault driver, and/or their insurance company, understanding the following two issues will be helpful for the day to day practice of auto accident cases.

In all auto accident cases there is a period of "pre-litigation," the time in which no formal lawsuit has been filed. During pre-litigation, the claimant, either himself or through his attorney, attempts to negotiate directly with the at-fault driver's insurance company. In the past the insurance company would routinely want to know "What injuries are being claimed?" "Has the claimant seen a doctor, or gone to the hospital?" "What are their medical injuries?" This is, as one can surmise, is a very reasonable request. As a result, claimants provide such information to the insurance companies. This often included signing an "authorization" form so the insurance company can collect the involved medical records and billings, and assess the extent of medical damages.

In turn, claimants frequently asked what the "policy limits" are of the involved insurance policy. In the event of serious injury cases, knowing the policy limits of the involved, potentially at-fault driver, allows for open discussion and an ability to resolve the case; especially when limits are on the smaller side.

Insurance companies routinely disclose policy limits to the claimants, in exchange for their medical information. Together, there would be fair and reasonable exchanges of information. From there, a resolution could hopefully be reached. It is important to remember that once a lawsuit is filed, the insurance carrier is required under NRCP 16.1 to disclose the limits involved, no matter what.

Therefore, it makes sense to disclose policy limits to claimants a bit early in an effort to work together and resolve cases. This general law was set forth in NRS 690B.042. Although this general approach makes some sense in allowing the involved parties to exchange information and work toward the goal of early resolution, there are problems on both sides of the aisle. Claimants who refuse to provide authorization forms and insurance carriers unwilling to provide policy limit information caused this law to be brought before the Nevada legislature.

In the last session NRS 690B.042 was repealed in its entirety. Now, at this time, there is no law encouraging parties (in a pre-litigation phase) to work together to resolve the dispute. It is still an important law to understand when handling auto accident cases. Claimants no longer have to supply medical information to the insurance carrier, and insurance carriers do not have to disclose policy limits. However, once formal litigation is filed, of course, both sides are required to disclose all of this information. Hopefully, even without this law, cooler and reasonable minds will prevail and parties will voluntarily choose to work with one another to see if cases can be resolved in the pre-litigation phase.

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INSURANCE POINTERS (cont'd)

The second important law to understand is actually a California law, that will be implicated only when a California resident is involved in an accident in Nevada. As there is a significant amount of traffic between these two states, many California residents get into accidents in Nevada, and Nevada attorneys will handle their cases. This next point on UM/UIM coverage is important to understand.

Assume a California resident is in an accident in Nevada, the third party is at fault, and has limits of $50,000. Next assume those limits get paid in a settlement because the injuries and losses clearly justify paying the policy limit. The next step in pursuing a recovery on behalf of the client would be to put her own UM/UIM carrier on notice, to make a claim, and seek additional monies so adequate compensation can be obtained.

Unfortunately, California has a law that requires an offset to be made on the UM/UIM recovery attempt. What this means is that for every dollar paid from the third party carrier, the UM/UIM carrier for the California resident gets an offset. So in the above example if a recovery is made of $50,000, then the California UM/UIM carrier does not have to pay unless its limits are greater than $50,000. If the injured person only had UM/UIM limits of $25,000 or even $50,000, that person would not have any recovery available to her. The only way she could recover additional funds is if her own UM/UIM policy was greater than $50,000.

This is completely opposite to Nevada law, which does not have such an offset. One can proceed against their UM/UIM carrier irrespective of the recovery made against the third party carrier.

Parties and their attorneys are well advised to know this rule.

JOIN US!

ETS Employment Law Seminar

May 15, 2019

9:00 a.m. to 4:00 p.m.

The Grove in south Reno

Presentation topics will include a legislative update; the interplay between the ADA, FMLA, and Workers' Compensation; and Service Animals under the ADA and NRS. We'll also have a mock trial presentation on national origin discrimination.

Call Jennifer Jacobsen at 775-786-3930 to register