

## Weird Employment Cases

Readers who have worked in human resources for any period of time know that employees say and do the darndest things. And some employers, undoubtedly without the benefit of experienced employment counsel, do some strange things also. Therefore, to brighten up these cold dark winter months, this issue of *The Resource* is a collection of some of our favorite crazy employment cases. All of the fact situations described below have been reported either in court cases or in the media, so are presumed to be true, no matter how improbable. Read and be amazed (or at least amused).

### CHEEKY PROTEST JUSTIFIES A “FOR CAUSE” TERMINATION

Jason Selch, an investment analyst for Columbia Management in Chicago, was upset upon learning that a friend and co-worker had been terminated for refusing to accept a new position with the Company at a lower wage. He was so upset, he walked into a conference room where the Company’s COO and CIO were meeting, and, after confirming with them that he did not have a covenant not to compete with the Company, dropped his drawers and “mooned” them.

While Selch undoubtedly knew that his actions could result in his termination (and hence his inquiry about the non-compete), he may not have realized that upon a termination “for cause,” he would forfeit his severance package worth nearly \$700,000. (We can only speculate about how Mrs. Selch might have responded to the news of her husband’s termination: “You did what??”)

Selch’s lawsuit against Columbia for breach of his employment agreement was dismissed by the court on summary judgment. The court found Selch’s behavior to be insubordinate, disruptive, unruly and abusive, concluding that he was justly terminated “for cause.”

### EMPLOYEE OF THE MONTH GETS MORE THAN A GOOD PARKING SPOT

Willie Mitchell, a WalMart employee at the Company’s Deerfield Beach, Florida store, apparently felt that his hard work and dedication to the Company were inadequately recognized. He made his feelings clear when, after a female co-worker was awarded the “Employee of the Month” award, he went into the store parking lot and shot out the window in her car. Co-workers reported that after the award was announced, Mitchell and the Employee of the Month were heard arguing about their respective workloads, and Mitchell told her repeatedly “I’m gonna show you.” While we can only

guess at what he planned to show her, our guess is a pink slip, as a WalMart spokesperson reports that Mitchell no longer works for the Company.

### **OFFICER DRAWS MORE THAN PUBLIC IRE FOR PEPPER SPRAY ASSAULT**

UC Davis campus police officer John Pike was widely vilified for pepper spraying a group of seated students at close range during a 2011 protest. The students sued the University for violation of their civil rights and received a \$1 million settlement. Meanwhile, Pike, who was on paid leave and received his full salary (about \$120,000 per year) during the University's eight-month investigation, filed for workers' compensation benefits claiming an on-the-job injury based upon the depression and anxiety he suffered from the way he was treated in the wake of the incident. The California Supreme Court held that, based upon the "no fault" nature of the workers' compensation system, Pike was eligible for \$38,000 in payments. And, although Pike was fired, he will still receive his full pension. Critics of the outcome of Pike's case have noted that Pike will be receiving considerably more than the pepper sprayed protesters, who are calculated to receive about \$30,000 each from their settlement with the University.

### **COME ON DOWN, CATHY!**

Fayetteville, North Carolina, US Postal Worker Cathy Wrench Cashwell was receiving workers' compensation benefits due to a workplace shoulder injury that she claimed left her unable to lift mail trays into a truck. She also claimed she could not stand, squat, climb, bend, reach or grasp. Cashwell was recently indicted and pled guilty to fraud after an investigation showed her lifting and carrying groceries and furniture, as well as going "zip-lining" with her husband on a Carnival cruise. Cashwell's claim was called into question when she appeared on the game show "The Price is Right" and demonstrated no difficulty in raising her arms and spinning the "Big Wheel." Oops. Can you guess the number of months in that jail sentence, Cathy?

### **IT'S ONLY A PROBLEM IF THE ASHTRAY SCREAMS BACK**

This past May, the EEOC filed suit against Dynamic Medical Services, a South Florida medical and chiropractic company, for creating a hostile work environment and failing to accommodate its employees' religious beliefs. According to the EEOC, the Company required its employees to spend at least half of their working time engaging in religious practices of the Church of Scientology, such as screaming at an ashtray, talking to a wall, staring at someone for eight hours without moving and walking up to a stranger and staring at him without speaking. Employees were also required to attend courses in Scientology, and one employee was made to undergo an "audit" by connecting herself to an "Electropsychometer" or "E-meter" (a claimed Scientology "religious artifact"). Several employees were also required to undergo a "Purification Rundown" or a detoxification program that was claimed "to enable an individual to rid himself of the harmful effects of drugs, toxins and other chemicals that lodge in the body and create a biochemical barrier to spiritual well-being." Two employees were terminated for refusing to participate in the Scientology practices. The case was recently resolved when Dynamic Medical Services signed a consent decree agreeing to pay \$170,000 and to cease its practices with regard to its employees' religious beliefs. The Company issued a

statement in which it denied the charges, claiming that it settled only to avoid the expense of litigation.

### **IT'S ONLY TORTURE IF IT DOESN'T MOTIVATE SALES**

Utah resident Chad Hudgens filed suit against his employer, Prosper, Inc., as well as his supervisor, Joshua Christopherson, claiming assault and battery, intentional infliction of emotional distress and wrongful termination. In his complaint, Hudgens alleged that when an employee did not meet certain sales goals, Christopherson would draw a mustache on the employee with permanent marker or remove the employee's chair. He also alleged that Christopherson would patrol the work area with a wooden paddle, loudly striking desks and tabletops. Hudgens claimed that Christopherson's actions were sanctioned by the Company because they led to increased revenues.

Apparently, these practices were not enough to increase sales to Christopherson's satisfaction. The crux of Hudgens' claim involved an incident in which Christopherson asked for volunteers for a "motivational exercise." (You would think the practices related above would make Hudgens think twice about volunteering, but anyway . . .) Under pressure, Hudgens volunteered, and he and the rest of the team were led to a hill near their office. Once there, Christopherson had Hudgens lie on his back with his head pointed downhill and with his arms and legs restrained by his co-workers. Christopherson then poured water over Hudgens mouth and nose so that he could not breathe, an exercise known in military "motivational" circles as "waterboarding." After the exercise, Christopherson instructed the team that they should work as hard at making sales as Hudgens had worked trying to breathe.

While the trial court dismissed Hudgens' claims, because Christopherson's aim had been to "motivate the team" and not to injure Hudgens (??), the Utah Supreme Court reversed and allowed the claims to go forward.

### **OTHER TERMINATIONS OF NOTE**

In 1963, Florida resident Richard Eggers, then nineteen years old, attempted to operate a coin-operated washing machine with a fake cardboard dime. He was arrested and spent a day in jail. Forty-nine years later, citing new Federal Regulations that prohibit banks from hiring anyone convicted of a crime involving dishonesty, banking giant Wells Fargo terminated Eggers as a customer service representative in its home mortgage division. Eggers' termination seems a tad ironic since the Regulations were enacted as a result of the massive complex fraud schemes perpetrated by financial firms and their executives.

Speaking of irony, remember that cruise ship, the Costa Concordia, that ran aground on the coast of Tuscany resulting in the evacuation of more than 4,000 passengers and crew and causing the deaths of 32 people? You also might remember that the Captain of the ship, Francesco Schettino, was accused of causing the incident by cruising too close to shore for a "salute" and for being distracted on a phone call when the incident occurred. He is also accused of fleeing the ship via a lifeboat while hundreds were still trying to escape the vessel. (The Captain claims that he tripped and "ended up"

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in one of the life boats.) In any event, Captain Schettino surely wins the award for chutzpah for his recently filed lawsuit against the cruise ship line for wrongful termination.

Finally, 61 year old Roy Lester is suing the New York Office of Parks, Recreation and Historic Preservation for age discrimination based on the termination of his employment as a part-time lifeguard for refusing to wear a Speedo style bathing suit. Lester claims that the rule requiring the wearing of Speedos by lifeguards is aimed at getting rid of older lifeguards. According to Lester, who is an accomplished triathlete, "There should be a law prohibiting anyone over the age of 50 from wearing a Speedo." We couldn't agree more Roy.

*Current and past issues of The Resource are available at [www.wyrick.com](http://www.wyrick.com) under News & Publications. For more information on the topics addressed in this newsletter, please contact:*

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