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## On The Radar: Age And Medical Condition Jokes

*Law360, New York (December 17, 2009)* -- Imagine this: A 58-year-old employee experiences "brain fade" during a staff meeting and cannot immediately remember the name of the CEO of the company's biggest customer.

His memory lapse earns him some serious ribbing, and the next day a co-worker circulates an e-mail joke purportedly consoling the employee by citing various benefits of having Alzheimer's Disease: 1) You can hide your own Easter eggs; 2) You meet new people every day; 3) You never have to watch reruns on television; etc.

Many employees might find this humorous, or simply delete the message as silly.

Imagine further, however, that unbeknownst to others, the 58-year-old employee has a parent who is severely afflicted by Alzheimer's Disease, and the employee has been losing sleep wondering if and when he might find himself similarly afflicted.

Couple that with the fact that this employee has been feeling insecure about keeping up with increased job responsibility demands, with competition from some energetic new hires in the department who all happen to be in their 20s or 30s.

All of a sudden the employer is dealing with a claim of harassment based on age and on perceived or actual disability.

The good news for employers is that employees have a very difficult time actually proving that such inappropriate conduct was sufficiently severe and pervasive to constitute legal harassment.

Harassment claims involving an employee with cerebral palsy who was allegedly called "slow stroke;" an employee with multiple sclerosis who was depicted on a "Stupid Employee of the Month Award" as a Special Olympian with a cane in his hand running a race; and a monocular employee who was called "Cyclops" by his supervisor have all been resolved in the employer's favor on summary judgment.

Nonetheless, savvy employers will reduce their litigation risk and promote an environment of respect for co-workers by educating their employees that comments related to age and/or medical condition can be very hurtful, even if meant in fun.

Employees in this day and age are generally aware that they face severe discipline for making jokes in the workplace based on sex and race. But employees are often less aware of the potential consequences of jokes about age and medical conditions.

For example, the following scenarios could occur in many workplaces with no one involved ever considering that the conduct might violate the organization's harassment policy:

- An employee trying to recall a discussion at a meeting with limited success jokes that "It's my ADD acting up again."
- An employee who is turning 60 (or 50, or 40) arrives at work to find his chair replaced with a wheelchair, with a big banner on black crepe paper proclaiming "Over the Hill."
- A middle-aged woman who comments that the office temperature seems higher than normal receives an e-mail from her supervisor the next day that proclaims "Real women don't have hot flashes, they have power surges."
- A 50-something employee asks a co-worker to repeat something he said, and the next day receives an e-mailed joke from the co-worker titled "Hard of Hearing" that says: Three hard-of-hearing retirees were taking a walk one March day. One remarked "Windy, isn't it?" "No," the second man replied, "It's Thursday." And the third man chimed in, "So am I. Let's have a soda."

Some people are able to find humor in the aging process, and even in the medical challenges of themselves and others. Others, not so much.

An employee who has a child struggling in school due to ADD might find a comment making light the condition very hurtful. An employee who has poked fun at her own menopausal symptoms, or an employee with a bum knee who has referred to himself as "the Gimp" may be less amused if co-workers — or worse, supervisors — join in with similar comments and references.

Employers who train employees that humor based on age or medical condition is inappropriate in the workplace can avoid the difficult situation of disciplining individuals who simply didn't realize that the jokes they were passing around in the workplace could violate the organization's harassment policy.

Employers should be proactive in:

- Emphasizing during harassment training that jokes based on age or medical condition do not belong at work.

- Helping employees understand that no matter how innocently intended, jokes based on age and medical condition can be truly hurtful to some people, whose feelings deserve respect.
- Making clear that the fact that such a joke was only shared with someone who took no offense is not an excuse.
- Providing some specific examples of jokes that most people might find humorous but that should be enjoyed outside of work if at all.
- Reminding employees that inappropriate conduct of any kind is considered a very serious matter and it can trigger very serious consequences.

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