



OPHD E-news

Fall 2013

An update on bias, harassment, and discrimination issues from the
Office for the Prevention of Harassment & Discrimination (OPHD)

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FACEBOOK “LIKE” IS PROTECTED FREE SPEECH

A federal appeals court ruled that “liking” something on Facebook is a type of speech protected by the First Amendment. A deputy sheriff in Virginia was fired after “liking” the Facebook page of the candidate running against his boss. The court decided that “liking” the Facebook campaign page was the “Internet equivalent of displaying a political sign in one’s front yard, which the Supreme Court has held is substantive speech.” For more information on the First Amendment, visit <http://freespeech.ucsd.edu>.

TOYS “R” US SETTLES DISABILITY CLAIM

Toys “R” Us agreed to pay \$35,000 to settle a disability discrimination lawsuit filed by the Equal Employment Opportunity Commission (EEOC) on behalf of a hearing impaired applicant. An applicant for a retail position in Maryland informed Toys “R” Us that she needed an American Sign Language interpreter for her interview. The employer informed her that she would have to provide her own interpreter. The applicant’s mother interpreted for her during the interview. Later, Toys “R” Us refused to hire the applicant despite her qualifications and ability to perform the job duties with or without reasonable accommodations. The Americans with Disabilities Act (ADA) requires employers to provide reasonable accommodations for individuals with disabilities, including job applicants. In addition to the monetary settlement, Toys “R” Us agreed to provide training on the ADA and non-discriminatory hiring practices to its managers and supervisors.

ABERCROMBIE & FITCH LIABLE FOR RELIGIOUS DISCRIMINATION

Clothing retailer Abercrombie & Fitch engaged in impermissible religious discrimination when it fired a Muslim female employee who wore a hijab at work. A 19-year-old employee who worked in the stockroom was informed that her hijab violated Abercrombie’s “Look Policy,” a company-wide dress code. Abercrombie told her that she would be fired unless she removed her headscarf while at work. The EEOC filed a lawsuit on behalf of the employee after she was fired. The federal court rejected Abercrombie’s defense that deviating from its “Look Policy” would jeopardize the company’s success and create an undue hardship. This was the third time

that a federal court ruled against Abercrombie's undue hardship defense in cases involving Muslim employees or applicants.

MALE V. MALE SEXUAL HARASSMENT VIOLATES FEDERAL LAW

A federal appeals court decided that a male iron worker who was subjected to homophobic slurs and other unwelcome sexual conduct by his male supervisor may collect damages under Title VII of the Civil Rights Act of 1964. Although the employee and his supervisor were both heterosexual men, the supervisor called the employee gay slurs, simulated sex when the employee bent over, exposed himself to the employee while urinating, and stated that the employee was "kind of gay" because he used Wet Ones. The court found that the supervisor's behavior was motivated by his belief that the employee did not conform to the supervisor's views of how a man should act. This type of sex stereotyping is prohibited under federal law.

DID YOU KNOW?

Justice Ruth Bader Ginsburg is the first Supreme Court justice to conduct a same-sex marriage ceremony. Justice Ginsburg commented, "I think it will be one more statement that people who love each other and want to live together should be able to enjoy the blessings and the strife in the marriage relationship." Justice Ginsburg, the second female justice to serve on the United States Supreme Court, turned 80 this year and marked her 20th year on the court.

BE THE VOICE—REPORT BIAS

OPHD oversees the UC San Diego online bias reporting system. All members of the UC San Diego community may report bias-motivated incidents or other acts of intolerance to reportbias.ucsd.edu, (858) 534-BIAS (2427) or ophd@ucsd.edu. Be The Voice—Report Bias.

OPHD IS ABOUT SOLUTIONS.

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