Cincinnati Law Library News

A Monthly Newsletter from the Cincinnati Law Library Association March 2008

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Employee who encouraged coworker to file claim protected by KCRA

Written by lawyers at Greenebaum Doll &McDonald for the *Kentucky Employment Law Letter* (M. Lee Smith Publishers, Nashville, TN)

The U.S. District Court for the Western District of Kentucky recently expanded protection to employees by holding that an employee who encourages a coworker to file a discrimination complaint is protected under the Kentucky Civil Rights Act (KCRA) so long as she has a reasonable, good-faith belief that discrimination occurred.

Facts

In August 2006, Larry Brewer, supervisor for Pioneer Credit Company's Kentucky offices, told staff members in Bowling Green that Jason Evan was being promoted to traveling manager. Employee Beth Eddington questioned the decision, and Brewer informed her that "he didn't figure she would be interested in the position because she had a child at home." Daria Johnson, another employee, urged Eddington to file a charge with the Equal Employment Opportunity Commission (EEOC). Eddington didn't believe discrimination occurred, but on Johnson's advice, she filed an internal complaint with the office manager.

Two days later, Pioneer terminated Johnson.

Johnson filed a charge under the KCRA claiming that Pioneer terminated her in retaliation for encouraging a coworker to file an EEOC charge. The company asked the court to dismiss the case, but the court denied its request.

Court's analysis

The KCRA makes it unlawful for an employer to discriminate against an employee for opposing an unlawful employment practice. The court acknowledged that claims under the Act are analyzed the same as claims under Title VII of the Civil Rights Act of 1964. To establish a *prima facie* (initial) case, an employee must prove that:

- she engaged in a protected activity;
- the employer knew about the protected activity;

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March 1 Renewal

Don't forget to renew your membership by March 1! This will ensure your continued access to our remote resources like Fastcase.com and Hein Online. Is your firm looking for ways to save on legal research fees? Firm memberships provide all lawyers and staff with access to our resources for a discounted fee.

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- the employer took an adverse action against the employee; and
- a causal connection existed between the protected activity and the adverse employment action.

Once the employee has established a *prima facie* case, the burden shifts to the employer to articulate a legitimate, nondiscriminatory reason for the adverse action. The burden then shifts back to the employee to prove that its reason is merely a pretext for discrimination.

Pioneer argued that Johnson never engaged in protected activity by encouraging Eddington to file an EEOC charge because Eddington didn't believe discrimination occurred. It further contended that the KCRA doesn't protect an employee from being terminated for encouraging a coworker to sue the employer. The court disagreed, stating that the Sixth U.S. Circuit Court of Appeals (the federal appeals court that covers Kentucky) recognizes an employee's opposition to unlawful conduct, which includes complaints about discrimination related to oneself or one's coworkers. Even if an allegation is ultimately found to be nondiscriminatory, the activity is still protected so long as the employee had a "reasonable, good-faith belief" that the actions were discriminatory.

The court found that Johnson established a *prima facie* case. It reasoned that when she encouraged Eddington to file a complaint, she opposed an unlawful employment practice.

There was sufficient evidence that a reasonable jury could find a good-faith belief on her part. The court further stated that Pioneer knew about Johnson's activity and that she suffered an adverse employment action through her ultimate termination. The court didn't discuss how the company learned about her suggestion to file a charge.

Finally, in relation to a causal connection, the court found that because Johnson's termination occurred within a matter of days after she encouraged Eddington to file a claim, she established a causal connection through temporal proximity.

The burden then shifted to Pioneer to articulate a legitimate reason for firing Johnson. The company asserted that it terminated her for poor performance and not being a "team player." In fact, Johnson's personnel filed revealed numerous reprimands for poor performance and for making rude comments toward supervisors, customers, and other coworkers. Therefore, the court determined that Pioneer met its burden, thereby shifting the burden back to Johnson to prove that its reason was only a pretext. In other words, she had to establish that the company's reason had no basis in fact.

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Johnson offered the deposition testimony of her supervisor, who testified that she was one of the best employees and was always a "team player." Accordingly, she met her burden, and the court denied Pioneer's request to dismiss the case. *Johnson v. Pioneer Credit Co.*, 2007 WL 3146091 (W.D. Ky.).

Bottom line

Traditionally, courts have granted protection under the KCRA only to employees who file a charge or participate in a proceeding. The court's ruling in this case expands the law in the wrong direction by protecting employees who simply encourage another to file a discrimination complaint.

It's important to note, however, that the Sixth Circuit has yet to address the issue. Hopefully, the court will take a look at the issue and rectify the situation, but until then, you must be mindful of how one district court views the scope of protection available to employees under the KCRA.

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Written by lawyers at Greenebaum Doll &McDonald for the Kentucky Employment Law Letter (M. Lee Smith Publishers, Nashville, TN)

For more information, please contact Richard S. Cleary @ (502) 587-3504

Workplace Investigations

Glenna Herald, Reference

Do employees have a legitimate expectation of privacy in the workplace? Do workplace investigations intrude on the rights of workers? When does workplace surveillance and drug testing violate the privacy of employees? To help you piece together the answers to these and other puzzling employment law questions, the CLLA offers, electronically, employment law publications from Aspen and CCH.

A good place to start your "workplace investigations" research is *Aspen's Employment Law Library*. This database includes forms and the following Aspen publications:

- Employment Relationships: Law and Practice
- Employee Dismissal: Law and Practice
- Covenants Not to Compete
- Drafting & Revising Employment Policies & Handbooks
- Employment Law Answer Book

Another good publication accessible from the comfort of your office is *CCH Employment Practices Library*. For information dealing specifically with "workplace investigations," CCH offers *Human Resources Management* and *Labor and Employment Law.*

Human Resources Management includes the titles *HR Report Letters* and *HR Ideas and Trends Newsletters*. *Labor and Employment* offers the following:

- Accommodating Disabilities Decisions
- Disabilities Management Guide
- EEOC Compliance Manual
- Employment Practices Guide
- Labor Arbitration Awards
- Labor Relations
- NLRB Case Handling Manual
- OFCCP Manual – Affirmative Action

Using these tools should help keep you current with the ever-developing labor law. For example, in the future, will genetic testing of employees become as common as drug testing of employees is today? Stay tuned!

Member Benefits

All members have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for **up to 6 weeks** at a time

Access to extensive electronic databases from the Law Library, including **LexisNexis**, **Shepards'**, **CCH Omnitax**, **CCH Human Resources Group**, and **CCH Business Group** resources, **Hein Online** Law Journals and Federal Register, and over 70 **Aspen / LOISLaw** treatises in 16 substantive areas

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Inexpensive **CLE seminars** throughout the year, on legal research and substantive topics

In addition, solos and members whose firm has a membership have **24 hour remote access** to Fastcase.com case law and Aspen/LOISLaw treatises

JD Supra

Written by Mary Jenkins, Law Library Director

A relatively new and intriguing example of social networking, JD Supra (http://www.jdsupra.com) is, primarily, a database of legal documents, all contributed by lawyers, firms, and others in the legal community. About to launch fully as of this writing, its value is dependent on the quantity and quality of the material submitted by contributors. JD Supra serves as a site for legal research, networking, lawyer and firm marketing and referral, "inside scoop" for the media, and more. A researcher can search filings by jurisdiction, court, region, or circuit and by general topic. A potential client can search the lawyer and firm profiles for Cincinnati and intellectual property, for example. Whether one sees this as a marketing venue or a viable option for legal research or a cool experiment in knowledge management, JD Supra is a potentially powerful Web 2.0 tool for any or all of the above. It is free and easy to become a contributor. Take a look!

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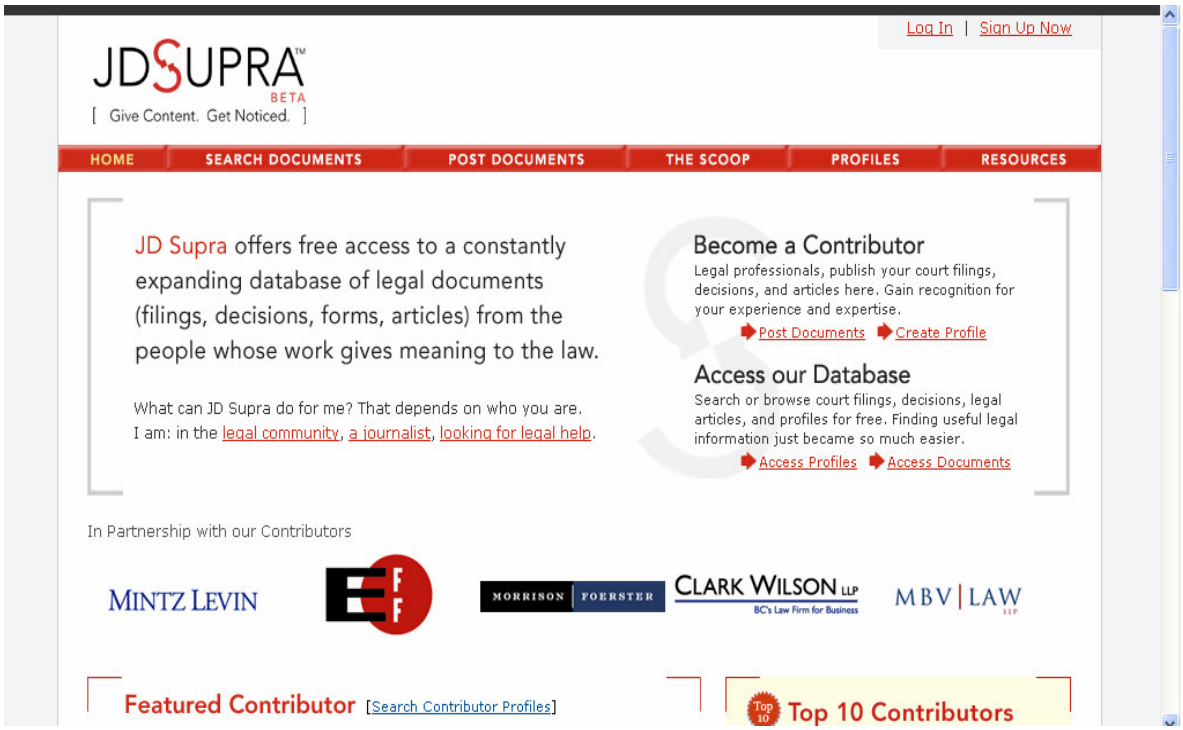
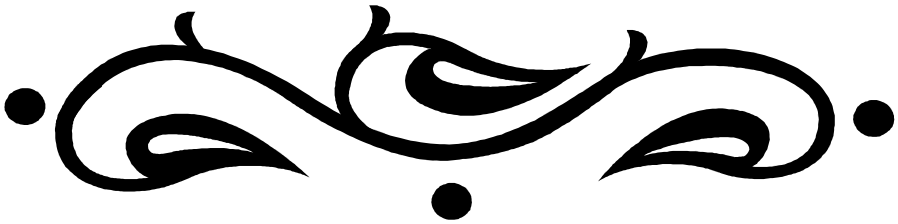


Remembering Former CLLA Member and Trustee Alan Lips

J. Alan Lips, a former member of the Cincinnati Law Library and its board of trustees, died on January 6, 2008.

Mr. Lips was a senior partner at Taft, Stettinius, and Hollister, LLP for 37 years and an esteemed labor lawyer.

Our sincere condolences to
Mr. Lips' family, friends, and colleagues.



Donation of Materials from the Family of Frederick O. Kiel

The family of Frederick O. Kiel, J.D., of Anderson Township recently donated materials from Mr. Kiel's law collection to the Cincinnati Law Library. Mr. Kiel was a respected author, speaker and expert witness with regard to tax-exempt bond matters.

In private practice since 1990, Mr. Kiel also served as Law Director for Anderson Township. Earlier, he was Partner (1980-1989) and of counsel (1990), Taft, Stettinius & Hollister, Cincinnati, and Associate (1966-1971) and Partner (1971-1980), Peck, Shaffer & Williams, Cincinnati.

Mr. Kiel was a multiple officer holder in the National Association of Bond Lawyers and edited several of its publications. He received the NABL Distinguished Service Award in 2002.

The Cincinnati Law Library Association is grateful for the gift of these materials and the thoughtfulness that it represents.

Free CLE Credit!

Please join Wendy Ramsey from Lexis-Nexis to brush up on your general searching skills starting at 9am. At 10am, Wendy will demonstrate how to find Federal Register and Code of Federal Registration documents via Lexis' administrative law databases.
Join us, won't you?

Location: Cincinnati Law Library Association
Date: Friday, March 14, 2008
Time: 9am – 11am

To register, please contact Madonna @ 513-946-5300

March 2008 Law Library Newsletter

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