



JACKSON LEGAL PROFESSIONALS ASSOCIATION



Volume 14 August 2005

Newsletter

Board Meeting...

The Board Meeting will be held on **Tuesday, August 16, 2005**, at the Mississippi Bar Center, 643 North State Street. Lunch will be provided by the members from the Brunini firm.



Monthly Meeting...

Our July meeting is scheduled for **Wednesday, August 24, 2005**, at noon at Mardi Gras Restaurant.



Happy Birthday to...

- 1 Gigi Sinyard
- 4 Lesley Dill
- 8 Nichelle Lanye Bradley
Shivochie L. Dinkins
- 15 Cassandra W. Bogan
- 17 Tammy T. Renfroe
- 20 Betty Sutton
- 22 Chris Gooch
- 25 Evelyn S. Harper, PLS
- 28 Nancy Harrison
- 29 Mary Griffin



Happy Wedding Anniversary to...

- 8 - Pamela & Marlon Turner
- 17 - Dorothy & Monroe Milton
- 19 - Charlotte & Johnny Simmons
- 31 - Leslie & Tom Alexander

Welcome New Members...

Adrienne C. Dumas from Brunini, Grantham, Grower & Hewes, PLLC.



ALS/PLS/PP Study Group...

The ALS/PLS/PP Study Group is being held every Thursday night, from 5:30 to 7:30 p.m. An announcement will be forthcoming about the new location for the study group.

Member News...

C2C Wesley Carl Simmons, an upcoming junior majoring in Engineering at the U.S. Air Force Academy, recently completed a three-week OPS training at Ramstein Air Force Base, Germany. Upon graduation from the Academy in May, 2007, Wesley will begin serving his 5 year obligation in the U.S. Air Force as a 2nd Lieutenant. Wesley is the son of Johnny and Charlotte Simmons of Clinton. Charlotte is employed at the Brunini law firm.

Inspiration...

ARE YOU INTERESTED in presenting a JLPA monthly meeting inspiration? If so, please contact Renee Dean, Inspiration Co-Chairperson at 601-968-5505 or e-mail at rmd@wisecarter.com

JLPA Program Chairman's

Point of View

Shhhhhhhhhhhhh. We will have a surprise guest speaker for our August monthly luncheon. The topic will be "Personal Safety". Hint: This person has been a guest before.

Felicia Turner
Programs Chairman



Companies need written policies and training to avoid liability for sexual harassment...

By: Susan Fahey Desmond, Esq.

Sexual harassment litigation is one of the fastest growing areas of discrimination law. There has been significant litigation concerning what is sexual harassment and when a company should be held responsible for the harassment of its employees. In 1998, the United States Supreme Court issued two very important decisions concerning employer liability, *Burlington Industries, Inc. v. Ellerth* and *Faragher v. City of Boca Raton*. The Court made it clear in these decisions that employers will be held responsible for a supervisor's harassment but provided certain defenses that an employer may utilize to avoid liability.

In *Ellerth* and *Faragher*, the Supreme Court espoused two basic principles: (1) an employer should be held responsible for the acts of supervisors, and (2) employers should be encouraged to prevent harassment and employees should be encouraged to avoid or limit the harm from harassment. To accommodate these principles, the Supreme Court found that an employer is always liable for a supervisor's harassment if it results in a tangible employment action such as a termination, demotion, failure to promote, etc. If the harassment does not result in such a tangible employment action, an employer may be able to avoid liability or limit its damages by establishing an affirmative defense that includes two necessary elements:

- The employer exercised reasonable care to prevent and correct promptly any harassing behavior; and

- The employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

To establish that an employer has exercised reasonable care to prevent and correct promptly any harassing behavior, it is vital that a company have an harassment policy, preferably in writing. It should be noted here that although *Ellerth* and *Faragher* addressed sexual harassment, the Court's holdings are not limited to sexual harassment. The principles espoused in *Ellerth* and *Faragher* applies to harassment by supervisors based on race, color, sex, religion, national origin, protected activity, age or disability. Thus, this policy should cover all forms of unlawful harassment, not just sexual harassment. An anti-harassment policy should contain, at a minimum, the following elements:

- A clear explanation of prohibited;

- Assurance that employees who make complaints of harassment or provide information related to such complaints will be protected against retaliation;

- A clearly described complaint process that provides accessible avenues of complaint;

- Assurance that the employer will protect the confidentiality of harassment complaints to the extent possible;

- A complaint process that provides a prompt, thorough, and impartial investigation; and

- Assurances that the employer will take immediate and appropriate corrective action when it determines that harassment has occurred.

Although having a written harassment policy in place is vital, it is not enough. An employer's duty to exercise due care includes training all of its supervisors and managers to address or report to appropriate officials complaints and regardless of

whether a complaint was framed in a way that conforms to the company's particular complaint procedures. The Equal Employment Opportunity Commission (EEOC) has stated that such training should explain the types of conduct that violate the employer's anti-harassment policy; the seriousness of the policy; the responsibilities of supervisors and managers when they learn of alleged harassment; and the prohibition against retaliation. This training may be done in many ways, i.e., computer based training with tests to ensure that the information was absorbed or classroom training. The training should be undertaken periodically and whenever an employer has determined that past training has been ineffective (i.e. a number of harassment complaints are being lodged).

With regard to small businesses, the EEOC states that the policies and complaint procedures may be more informal. Even in such a situation, however, it is imperative that an employer be able to establish that it has effectively communicated its prohibition against harassment to all employees such as during staff meetings.

- The second prong of the defense requires a showing that the employee "unreasonably failed to take advantage of any preventative or corrective opportunities" provided by the employer. Many employees claim that they did not use an employer's complaint procedures due to a fear of retaliation, there were unreasonable obstacles to complaining (i.e., requiring an employee to complain to the alleged harasser); or that the complaint mechanism was ineffective. To avoid these types of excuses, an employer must teach its employees that its policies prohibit such retaliation and educate employees on the appropriate avenues to complain that do not involve the individual having to complain to the alleged harasser.



