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THE PERILS OF RELIGIOUS ACCOMMODATION: EMPLOYEES' PERCEPTIONS

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ABSTRACT

Religion plays an important role in the values that people hold. The increase in the number of religious discrimination lawsuits filed with the EEOC indicates that employers are not proactive enough in meeting the religious needs of employees. With international markets and immigration growing, it is inevitable that today's workforce is becoming more diversified. This diversity not only encompasses ethnicity, but also culture, language, and religion. Although many people would prefer that religion had no place in the workplace, factors influencing the presence of religion include the workplace becoming a primary source of community, the increase in immigration, and the change in the role of work in the lives of individuals. We investigated the perceptions of employees concerning religious accommodation. We found that 65% of respondents worked at a company with an official diversity policy; however only 55% felt that their employer has a clear method of communicating this policy. Companies allowed religious activities but only 49% of companies incorporate different faiths from Christianity or Judaism into account when making the preparations. Fifty-six percent of respondents felt their company had a policy allowing attire accommodation if an employee's religious practice conflicts with the dress code.

INTRODUCTION

There are approximately 310 million people in the United States (www.census.gov, Nov. 2009). According to a national Gallup Poll, 95 percent of the national population says that they believe in God or a universal spirit, and 90 percent say that religion is important (Ball & Haque, 2003; Henle & Hogler, 2004). For most individuals, because work dominates such a large part of one's life, it is difficult, if not impossible, to separate one's religious beliefs from the workplace. Consequently religious diversity is emerging as an issue in the workplace. Because it is driven by demographic trends, religion looms large as a future diversity issue. Therefore it is imperative that interest be given to how businesses deal with religious accommodation and the conflict that arises when a compromise cannot be found.

Data compiled by the U.S. Equal Employment Opportunity Commission (EEOC) indicates the religious discrimination claims against employers have increased from 1,811 in Fiscal Year 1999 to 3,386 in Fiscal Year 2009 with monetary awards rising from $3.1 million to $7.6 million. The monetary rewards did not include monetary benefits obtained through litigation. In 1999, 2,188 were resolved (some cases forwarded from previous year) while in 2009, 2,958 cases were resolved (www.eeoc.gov/stats/religion). Accordingly, businesses are looking for ways to avoid any future

accommodation and discrimination suits by being prepared to deal with religious issues in the workplace.

CIVIL RIGHTS ACT OF 1964

Even though the First Amendment gives protections through the free exercise clause, most employees and employers rely on the Civil Rights Act of 1964 and its amendments to protect religious freedoms (Ball & Haque, 2003). Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex and national origin. It prohibits employers from discriminating against individuals because of their religion in hiring, firing, and other terms and conditions of employment. Employers may not treat employees or applicants more or less favorably because of their religious beliefs or practices. Employees cannot be forced to participate -- or not participate -- in a religious activity as a condition of employment. Employers must permit employees to engage in religious expression, unless the religious expression would impose an undue hardship on the employer (http://www.access.gpo.gov). The EEOC defines a reasonable religious accommodation as "any adjustment to the work environment that will allow the employee to practice his religion." Employers can accommodate employees by allowing: flexible scheduling, voluntary shift changes, lateral transfers or job reassignments, modification of dress code and grooming requirements, and other modifications of workplace policies (Wolkinson & Nichol, 2008). Title VII requires employers to accommodate all types of religious diversity, observances, practices, and beliefs unless it causes an "undue hardship." (www.eeoc.gov/stats/religion.html).

RESEARCH METHODOLOGY

Our research is based on data collected by an online survey of 80 individuals. The only requirement for participation was employment. Participation was voluntary and responses were confidential. Qualified volunteers were sent a seven page survey. Participants were localized in the southeastern section of the U.S. The different locations offered a variety of workplace cultures and practices. Participants vary in age, profession, ethnicity, religion, and gender. The companies that participants work for also varied in size and industrial sector. Six different areas were utilized in this study: official policy, holidays/time-off, dress code, food, affinity networks, and office space decorations.

The sample consisted of 80 individuals, 78 percent were female and 22 percent male. Participants ranged in age from 21-40. Fifty-six percent of participants were between the ages of 21-26. Thirty-four percent of participants were between the ages of 27-37, and 11 percent were 38 or over. Eighty-three percent were Christians, 11 percent were undecided, and five percent atheist. Sixty-seven percent of participants were single, and 33 percent were married. Forty-four percent work in professional positions, 33 percent in clerical, 11 percent in managerial positions, and 11 percent in technical positions.

Measures used in the survey included the following areas with sample questions given. Holidays and Time-off accommodations were tested with five questions. A Likert scale ranging from 1 (strongly agree) to 6 (strongly disagree) was used. No option for 'neither agree nor disagree' was given. Questions used were: "My company has a definite policy regarding religious holiday

leave and an avenue of communication between employees and management to address scheduling difficulties resulting from religious need." "Management takes into account employees various religious holidays when planning meetings, workshops, trips, dinners, etc…" "My company holds holiday events, and takes into account different faiths of the employees when planning these events."

Dress Code accommodation was assessed with three questions. A Likert scale ranging from 1 (strongly agree) to 6 (strongly disagree) was used. No option for 'neither agree nor disagree' was given. The questions were: "My company has a dress code and policies in place to deal with religious attire accommodations." "Employees are aware of what avenues to take for communicating special religious attire needs."

Food and accommodation was measured with four questions using the same Likert scale as on other areas. No option for 'neither agree nor disagree' was given. "My company provides food for the employees (cafeteria, vending machine, etc…)" "My company holds special events involving food and/or drink (banquets, dinner meetings, cocktail parties, etc…)" "These meals accommodate religious and ethical needs of employees (kosher, halal, vegetarian, etc…)"

Affinity Networks and accommodation was measured with three questions using the same Likert scale as for other categories. Included were: "My company allows the formation of on-site affinity groups or religious based affinity groups." "There is a clear policy that is communicated to all employees regarding these groups and their relationship to the company as a whole."

Office Space Decoration accommodation was measured with five questions with the same Likert scale as other questions. Questions included: "There is a policy regarding decoration of personal work space, including religious decoration." "My company allows special decoration of office space for holidays, and they accommodate the needs of religious and cultural diversity." "There are avenues to communicate responses about such decorations." Questions also included: "Does your company have a policy?" and "Is it clearly stated and available for every employee?"

RESULTS

As far as Holidays and Time off, 84% of participants work for companies that have a religious holiday leave policy. Seventy-seven percent of participants agree that their companies offer avenues of accommodation to address scheduling difficulties resulting from religious need, and coworkers can cover or switch shifts. Twenty-two percent of participants did not feel that their companies offer these avenues of accommodation for religious leave. Only fifty-five percent of respondents feel that management at their company takes religious holidays into account when planning meeting, workshops, trips, dinners, or other activities. Almost half (45 percent) felt that their management never considered other religious holidays or observances into account when planning functions. Eighty-nine percent of the companies participants work for held holiday-related events. Yet, participants felt that only 49 percent of the people planning these events actually take different faiths into account when making the preparations. Over half of the participants felt that their companies did not consider the various religions of their employees.

On Dress Code, 84% of participants work for companies that have an official company dress code. Fifty-six percent of respondents felt their company had policies in place regarding attire accommodations if an employee's religious practice conflicted with the dress code. However, 44 percent of respondents disagreed that their company had attire accommodation policies in place.

Although 72 percent of participants know what avenues are available for communicating special religious attire needs with management, 28 percent do not.

Concerning Food, 67% of participants' companies provide food for employees through a cafeteria, vending machine, or office discount program. Yet, participants feel that only 37 percent of these meals accommodate unique religious and ethical needs of employees (kosher, halal, vegetarian). 72% of participants' companies held special events involving food and/or drink, such as banquets, dinner meetings, and cocktail parties. However, just slightly more than half (55%) of these offered meals which accommodated unique religious and ethical needs of employees.

On Affinity Networks, 73% of participants agreed that their companies allowed the formation of on-site affinity groups. Of these, only 61 percent of participants felt that religious-based on-site affinity groups were allowed. However, only 44 percent of respondents agree that their companies communicated the policy regarding these groups and their relationship to the company.

On Office Space Decoration, 56% of participants agreed that their company had a policy regarding decoration of personal work space within one's office or cubicle, on walls in public areas, and in the employee lounge. Yet, only 39 percent of these policies address religious decoration. More than 60% of participants' companies did not address any type of religious office decoration. 99% of participants agreed that their company allowed special decoration of office space for holidays, and only 27 percent of these decorations did not accommodate the needs of a religiously and culturally diverse employee base. In addition, 72% of participants' companies offered avenues to communicate reactions to these decorations.

On Official Policy, 65% of respondents agreed that their company had an official diversity policy. And 55 percent of these respondents felt that their employer had a clear method of communicating this policy to employees and the public.

ANALYSIS

The study revealed that at least 65 percent of respondents' workplaces are attempting to protect themselves by ensuring that they have at least a minimum diversity policy. One participant commented, "I work for the Department of Defense so things are pretty politically correct…I agree with most all of the regulations they have in place." Eighty-four percent of the companies have taken care to include policies on religious observance leave/time off and dress codes. Some companies have expanded their avenues of communication to be able to better communicate policies and accommodations for employees. However, many of the participants felt that more could be done. As is often the case, managers believe that they are good communicators and employees report never being 'in the loop.' Posting the policy on bulletin boards and online along with training sessions could assist in improving the lack of understanding the diversity policies in an organization.

Ninety percent or more of participants' companies hold holiday related events and allow holiday decorations. However, more than half of the participant's feel that their companies are not considering different faiths when planning for these parties and allowing decorations to be displayed. Another blunder seems to be the lack luster appeal of accommodating meals and food for different and unique religious preparation. Less than 40 percent of participants' companies

accommodate meals and unique food preparation in every day supplied meals, but also in special events involving food.

CONCLUSIONS

Religion plays an important role in the values people hold. These values determine the way people dress, eat, act, and even the way they perform their job. People expect the basic rights to practice religion in the way they like, but at the same time they expect being protected from others imposing religion on them. Reasonable accommodations should be made so that employees can follow their beliefs, yet the accommodation should not create a significant expense. However, employers must take care when denying a religious accommodation, because litigation can sometimes outweigh the cost of accommodation. Businesses should set religious diversity guidelines and include them in employee policies and training. These policies should be frequently communicated and strictly enforced. Adhering to this advice should allow businesses to be successful in dealing with religion in the workplace.

REFERENCES

Ball, C., & Haque, A. (Fall 2003). Diversity in religious practice: Implications of Islamic values in the public workplace. *Public Personnel Management*, 32(3) 315-330.

Coşgel, M., & Minkler, L. (2004). Religious identity and consumption. *Review of Social Economy*, *62*(3), 339-350.

Edgell, P., Gerteis, J., & Hartmann, D. (2006). Atheists as "Other": Moral boundaries and cultural membership in American society. *American Sociological Review*, *71*(2), 211-234.

Equal Employment Opportunity Commission. Religious-based charges FT 1997- FY 2009.

Henle, C.A., & Hogler, R. (2004). The duty of accommodation and the workplace religious freedom act of 2003: From bad policy to worse law. *Labor Law Journal*, 155-165.

Morgan, J. (2004). How Should business respond to a more religious workplace?. *SAM Advanced Management Journal*, *69*(4), 11-19.

Wolkinson, B., & Nichol, V. (Dec. 2008). Religious discrimination: Arbitrating the grievances. *Dispute Resolution Journal*, 54-63.

THE COST OF ARBITRATION: A DEFENSE TO THE ENFORCEABILITY OF ARBITRATION AGREEMENTS?

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ABSTRACT

Arbitration clauses in contractual arrangements are fairly standard today. By agreeing to arbitrate, the parties to an arbitration agreement waive their rights to seek redress of their claims in a court in favor of an arbitration tribunal. While litigation is criticized as being expensive and time-consuming, costs associated with arbitration are far from inconsequential. If the parties have waived their right to go to court, even in situations in which fees and costs may be awarded to the prevailing party, and if arbitration costs are cost-prohibitive, could there be a defense to the arbitration contract on grounds of unconcionability? This paper explores situations in which such an argument could be successful, and suggests ways to apportion costs that would make arbitration clauses less susceptible to such a challenge.

INTRODUCTION

The Federal Arbitration Act (FAA) provides for the enforceability of a written arbitration provision in any maritime transaction or contract evidencing a transaction involving commerce, and declares that such agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract" (9 U.S.C. § 2, 2007). Supreme Court precedent sanctions arbitration as a dispute resolution mechanism, as well (Carrington, 2002). Commercial business, consumer, and employment disputes are arbitrated by organizations such as the National Arbitration Forum (NAF) and the American Arbitration Association (AAA). Initially, arbitration was touted as a cheaper and more efficient alternative to litigation. However, arbitration as a means of dispute resolution now can be quite costly.

The American Arbitration Association charges a filing fee per case that ranges anywhere from $500-$7,000 depending upon the amount of the claim. The AAA also requires a hearing fee that can be as much as $250 per party, per case. In addition to filing and hearing fees, the arbitrator(s) who hear the case charge their own individual service fees. In the state of North Carolina, the average compensation for an AAA arbitrator is $1,225.00 per day (Tillman v. Commercial Credit Loans, Inc., 2008).

In comparison, court costs are relatively insignificant to the cost of arbitration proceedings. Public Citizen's statistics in 2002 revealed that an $80,000 consumer claim brought to the Circuit Court of Cook County, Illinois carried a forum fee of $221. However, the same claim brought to the

National Arbitration Forum would cost approximately $11,625, and if brought to the American Arbitration Association would result in estimated payments in excess of $6,600.

Moreover, in stark contrast to arbitration, fee-shifting statutes often permit the recovery of attorneys' fees in litigation as a means of encouraging representation by counsel. Statutory awards of attorneys' fees and costs are virtually nonexistent in arbitration proceedings. Thus, not only must litigants pay substantial sums for the process of arbitration, they must pay for representation in that forum as well.

Since arbitration clauses foreclose litigation as an option, they effectively force the parties to settle their dispute through arbitration. Therefore, if the cost of arbitration is prohibitively high, some litigants effectively may be denied an opportunity to pursue any remedy at all. In reality, the party in the superior bargaining position consciously may include an arbitration clause "to deter individuals from filing claims, to prevent them from securing legal representation, and to decrease their chance of securing significant relief if they do bring claims" (Sternlight, 838, 2002). While such a strategy may deter frivolous claims (Gregg v. Hay-Adams Hotel, 1996), valid claims also are deterred, and whether or not a claim is valid or invalid cannot be discerned until the case is heard. To enforce an arbitration clause to the exclusion of the right to seek redress in the court system in certain contexts arguably raises constitutional concerns (Sternlight, 1997).

Another criticism of mandatory arbitration focuses on the fact that most employees and consumers do not enter into these clauses voluntarily (Sternlight, 2002). This fact, coupled with the substantial fees associated with arbitration, could make arbitration agreements subject to challenges of unconscionability. While the FAA provides that mandatory arbitration contracts are enforceable, certain defenses, such as fraud, duress, or unconscionability, may be applied to invalidate arbitration agreements without contravening that statute (Doctor's Assocs., Inc. v. Casarotto, 1996).

In determining whether or not an arbitration agreement is unconscionable from a substantive perspective, one state court considers factors such as the filing fees for arbitration compared to the filing fees in state district courts, as well as the amount of the arbitrators' fees (Barrett v. McDonald Investments, Inc., 2005). Moreover, procedural unconscionability can be an issue, as well, for example, by printing a mandatory arbitration clause inconspicuously on the back of the contract (Rollins v. Foster, 1998). This paper will analyze arbitration clauses in employment, consumer and franchise contracts to ascertain if the cost of arbitration could render the clause unconscionable and unenforceable. It also will present options to make such clauses less subject to that challenge.

EMPLOYMENT

Mandatory arbitration clauses can be challenged in employment agreements. The allocation of arbitration costs certainly can be a factor in determining the enforceability of such clauses. In considering a dispute resolution agreement, which required the employee to split the arbitrator's fees with the employer, the Ninth Circuit concluded that the fee allocation scheme alone would render the arbitration agreement unenforceable. (Circuit City Stores, Inc. v. Adams, 2001). Additionally, in Cole v. Burns International Security Services (1997), an employee filed suit against his employer for wrongful termination, alleging racial discrimination, harassment and the intentional infliction of emotional distress. The employer moved to compel arbitration, and the appeals court found that, while the agreement to arbitrate was valid, the cost distribution required by the arbitration agreement

was not fair to the employee, and required the employer to pay all of the arbitrator's fees and expenses. In dicta, the court indicated that an employee could not be required to agree to arbitrate his public-law claims as a condition of employment if the arbitration agreement required him to pay all or part of the arbitrator's fees and expenses.

CONSUMER

Most consumer agreements are contracts of adhesion, which are written by the retailer and presented to the consumer on a take it or leave it basis (Scarpino, 2002; Hilverda, 2007). This fact, coupled with the relatively small amounts of money that are involved in consumer disputes, makes them subject to a challenge of substantive unconscionability, particularly if the fee arrangement of the mandatory arbitration clause makes arbitration cost-prohibitive. In Rollins v. Foster (1998), the consumer signed an extermination services contract for a term of two years. She challenged the arbitration clause based on costs, and while the district court made no finding of fact with respect to her ability to pay, it acknowledged "that there may actually be circumstances in which such an argument would preclude a court from enforcing an arbitration clause against a low-income consumer."

In Ting v. AT&T (2003), the Ninth Circuit examined whether or not California law would allow AT&T to impose an arbitration agreement upon its customers. AT&T's Consumer Services Agreement (CSA) required consumers to split the arbitration fees with AT&T for any claim brought against the company. The district court found that "while the majority of complainants would be handled satisfactorily either by customer service representatives or subsidized arbitration, some complainants would hypothetically face prohibitive arbitration costs, effectively deterring them from vindicating their statutory rights" (Ting v. AT&T, 1151, 2003). In reviewing the case, the court held that "parties that agree to arbitrate statutory claims still are entitled to basic procedural and remedial protections so that they can effectively realize their statutory rights, and found the legal remedies provisions unenforceable and unconscionable under California law."

Another area in which consumer disputes develop over arbitration clauses is the landlord/tenant relationship. In Onni v. Apartment Investment & Management Company (2003), tenants filed a class action lawsuit challenging landlord's practice of charging late fees on overdue rent payments. The landlord moved to compel arbitration pursuant to the lease, and the tenants sought to invalidate the arbitration agreement on the grounds of unconscionability. The tenants challenged the arbitration agreement on four grounds: 1) it was hidden within the fine print, 2) it required the tenants to arbitrate all claims, no matter the amount of the claim, while the landlord was only required to arbitrate certain claims, 3) it required tenants to pay one-half of the arbitrator's fees and bear their own costs of arbitration, and 4) it provided that the arbitrators had no authority to award punitive, exemplary, consequential, special, indirect or incidental damages or attorneys' fees. While the trial court instinctively enforced the agreement to arbitrate as acceptable policy, the appeals court remanded the case to more completely evaluate all of the facts before rendering a judgment to compel arbitration.

FRANCHISES

Arbitration clauses remain fairly standard in franchise agreements with respect to the resolution of disputes between the franchisor and franchisee (Drahozal& Wittrock, 2008). Nevertheless, in addition to consumers and employees, franchisees have questioned the fairness of agreements to arbitrate, as well. In Ticknor v. Choice Hotels International, Inc. (2001), an arbitration clause in an EconoLodge franchise agreement stated that every dispute that arose between the parties, which was related to the agreement, would be resolved by binding arbitration. In response to a motion to compel the arbitration of a dispute that arose, the franchisee raised the state law defense of unconscionability. The appeals court concluded that "an unconscionable arbitration clause in an adhesion contract is unenforceable in Montana as a matter of public policy" (Ticknor v. Choice Hotels International, Inc., 939, 2001).

CONCLUSION

In sum, arbitration clauses are favored under federal and state law. However, in certain circumstances, such as those in which they are incorporated into contracts of adhesion, and in which the relative cost of arbitration is disproportionately related to the amount of money in dispute so as to foreclose the adjudication of the claim, the clause operates as a complete deterrent to seeking a redress of claims. Such an effect could result in courts declaring the arbitration agreement unconscionable. Therefore, in drafting such clauses for employment, consumer and some business agreements, careful attention should be paid to the allocation of costs for the arbitration proceeding and to the overall fairness of the agreement to arbitrate.

REFERENCES

Carrington, P. D. (2002). Unconscionable Lawyers. *Georgia State University Law Review, 19*, 361-393.

Cole v. Burns Int'l Sec. Servs. (1997). United States Court of Appeals, 105 F.3d 1465.

Circuit City Stores, Inc. v. Adams (1999). United States Court of Appeals, 194 F.3d 1070.

Doctor's Assocs., Inc. v. Casarotto (1996). United States Supreme Court, 517 U.S. 681.

Drahozal, C. R. (2001). "Unfair" Arbitration Clauses. *University of Illinois Law Review,* 695-790.

Drahozal, C.R. & Wittrock, Q.R. (2008). Is There a Flight From Arbitration?, *Hofstra Law Review, 37*, 71-115.

Green Tree Financial Services Corp. v. Randolph (2000). United States Supreme Court, 531 U.S. 79.

Hilverda, B (2007). Protecting the Right to a Jury Trial: Idaho's Response to Mandatory Arbitration Clauses in Adhesion Contracts. *Idaho Law Review, 44,* 185-212.

Iwen v. U.S. West Direct (1999). Montana Supreme Court, 293 Mont. 512.

Kloss v. Edward D. Jones & Co. (2003). Montana Supreme Court, 310 Mont. 123.

Onni v. Apartment Investment & Management Co. (2003). Illinois District Court, 344 Ill. App. 3d 1099.

North American Van Lines, Inc. v. Collyer (1993). Florida Court of Appeals, 616 So.2d 177.

Rollins v. Foster (1998). United States District Court, 991 F. Supp. 1426.

Scarpino, J. A. (2002). Mandatory Arbitration of Consumer Disputes: A Proposal to Ease the Financial Burden on Low-income Consumers. *American University Journal of Gender, Social Policy & the Law, 10,* 679-710.

Sternlight, J. R. (2002). Is the U.S. Out on a Limb? Comparing the U.S. Approach to Mandatory Consumer and Employment Arbitration to that of the Rest of the World. *University of Miami Law Review,* 831-864.

Sternlight, J. R. (1997). Rethinking the Constitutionality of the Supreme Court's Preference for Binding Arbitration: A Fresh Assessment of Jury Trial, Separation of Powers, and Due Process Concerns, *Tulane Law Review, 72*, 1-100.

Tillman v. Commercial Credit Loans, Inc. (2008). North Carolina Supreme Court, 362 N.C. 93.

Ticknor v. Choice Hotels International, Inc. (2001). United States Court of Appeals, 265 F.3d 931.

Ting v. AT&T (2003). United States Court of Appeals, 319 F.3d 1126.

CHANGES IN ENFORCEMENT FOCUS COMING TO THE U. S. DEPARTMENT OF LABOR

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ABSTRACT

With the election of a new president and a new majority in the legislative branch, employers subject to laws and regulations administered by the United States Department of Labor (DOL) should be preparing for a number of changes. In June of 2009, new U.S. Secretary of Labor Hilda Solis, addressing a National Policy Forum in Washington, D.C. stated that under her watch, "enforcement of our labor laws will be intensified" (Gurchiek, 2009). While vowing to not completely eliminate voluntary compliance programs initiated by her predecessor, the main focus of the DOL will turn from voluntary compliance programs to enforcement (Leonard, 2009). The purpose of this paper is to identify aspects of DOL's enforcement efforts that employers can expect to see in the near term and policy and practice suggestions to facilitate compliance.

INTRODUCTION

Business decision makers in the United States (U.S.) over time have learned that the changing of the guard in the Executive and Legislative branches of the Federal Government can lead to pronounced changes in a number of policy areas. With respect to U.S. Labor Policy, and specifically the enforcement focus of the U.S. Department of Labor, the changes in policy often create apprehension for business decision makers with respect to their compliance efforts and possible increases in their exposure to litigation. With the election of President Obama and an initial "super majority" for Democrats in both houses of Congress, employers subject to laws and regulations administered by the United States Department of Labor (DOL) should be preparing for a number of changes. While the election of Republican Scott Brown in Massachusetts ended the Democrat's super majority in the Senate, with the confirmation of President Obama's appointment of Hilda Solis as the new U.S. Secretary of Labor, the enforcement focus of the U.S. DOL under her watch has been made clear - "enforcement of our labor laws will be intensified" (Gurchiek, 2009). While vowing to not completely eliminate voluntary compliance programs initiated by her predecessor, the main focus of the DOL will turn from voluntary compliance programs to enforcement (Leonard, 2009). The purpose of this paper is to identify aspects of DOL's enforcement efforts that employers can expect to see in the near term and policy and practice suggestions to facilitate compliance.

DOL CHANGE AGENDA

The change in focus at the DOL was made clear early on in President Obama's tenure. The appointment of U.S. House of Representative Hilda Solis, described as "a long time advocate of progressive labor policies", to lead the U.S. DOL should have served as a wakeup call to decision makers of what lies ahead (Meneghello, 2010). In the President's DOL budget proposal for fiscal year 2010 he stated that "for the past eight years, the departments labor law enforcement agencies have struggled with growing workloads and shrinking staff" and he promised increased funding for three key agencies: Occupational Safety and Health Administration, the Wage and Hour Division, and the Office of Federal Contract Compliance Programs (OFCCP) (Smith, 2009). Secretary of Labor Hilda Solis has made it clear since assuming leadership of the DOL that the focus of the agency will be on enforcement. In a June 2009 speech to the National Policy Forum in Washington, D.C. Solis stated that she "wants to restore some of the things that have been taken away" in the past eight years and "let me be clear: under my watch, enforcement of our labor laws will be intensified so we can provide an effective deterrent to employers who may unnecessarily put their workers' lives and employment at risk" (Gurchiek, 2009). In a HRMagazine interview with Senior Writer Bill Leonard, Solis again reiterated a goal of the DOL under her watch was "to make sure we step up enforcement of worker safety and health standards, increase protections for workers' pay and benefits, including promoting equal pay, expand paid leave and raise the minimum wage" (Leonard, 2009). In December of 2009, Secretary Solis when further describing her vision of the mission of the DOL stated that "the department will seek to enact an array of 90 rules and regulations in 2010 aimed at ensuring that workers are paid a fair wage, have a voice in the workplace, are provided a safe workplace and have a secure retirement" (Maurer, 2009 C).

Statements by other key DOL leaders including Assistant Secretary of Labor Phyllis Borzi also make it clear that the new administration viewed the Bush Administration as weak on enforcement of the country's labor laws. In a speech at the American Society of Pension Professionals and Actuaries/DOL Speaks conference in September of 2009, Borzi presented an ambitious enforcement plan and stated "there's a new sheriff in town" and that "the previous administration focused on compliance assistance , but that's only good if it is combined with strong enforcement" (Maurer, 2009 A).

Compliance with DOL regulations regarding wage and hour issues has been an especially difficult task for employers in recent years. Research by the Center for Urban Economic Development, the National Employment Law Project, and the UCLA Institute for Research on Labor and Employment concluded that many employment and labor laws are regularly and systematically violated and that a large percentage of workers in the United States are underpaid and otherwise mistreated at work (CORT, 2009). The study found that the most frequent violations involved minimum wage, overtime, "off-the-clock" violations, meal break, pay stub and illegal deduction violations (CORT, 2009). In another report, the Seyfarth Shaw LLP law firm's sixth annual Workplace Class Action Litigation Report noted that "collective actions pursued in federal court under FLSA outnumbered all other types of private class actions in employment-related cases (Seyfarth Shaw LLP, 2010).

DOL ENFORCEMENT INITIATIVES

In addition to increased funding of enforcement activities, the DOL has also embarked on an ambitious hiring plan. In a November press release, Secretary Solis reported that she had hired 250 new wage and hour investigators, "a staff increase of more than one third, to ensure that we promptly respond to complaints and can undertake more targeted enforcement" (WHD News Release, 2009). In that same press release, Solis noted that "in the past three months alone, the department has had several significant enforcement cases, including collecting nearly $2 million in back wages for more than 500 workers" (WHD News Release, 2009).

The U.S. Occupational Safety and Health Administration (OSHA) also announced its regulatory priorities for 2010. OSHA's announced "ambitious" agenda for 2010 "includes 29 regulatory items and projects, two requests for Information, seven Notices of Proposed Rulemaking and six final standards" (Maurer, 2009 B). Projects to be initiated in 2010 involve airborne infectious diseases, musculoskeletal disorders, developing final rules on cranes and derricks, rulemaking involving combustible dust, fall hazards, and hazard communication and rules dealing with crystalline silica and exposure to beryllium (Maurer, 2009 B). OSHA also plans to step up enforcement of existing safety and health standards and whistleblower discrimination investigations. To those ends, in its FY 2010 Congressional Budget Justification, OSHA requested the hiring of an additional 130 compliance safety and health officers and 25 whistleblower discrimination investigators (FY 2010 Congressional Budget Justification, 2009). In its congressional budget request, OSHA also announced it was developing a new program, the Severe Violators Inspection Program (SVIP) that will target enforcement action to those employers that have excessive violations, fail to correct hazards, or have fatalities with serious violations associated with an accident (FY 2010 Congressional Budget Justification, 2009).

At the DOL's Employee Benefits Security Administration (EBSA), planned enforcement activities include a "contributory plan criminal project" designed to prosecute violators that fail to forward participant contributions to employee benefit plans (Maurer, 2009 A). EBSA also plans to target employers that delay remittance of contributions, multiple-employer welfare arrangements (MEWAs), and health care fraud (Maurer, 2009 A).

The Office of Federal Contract Compliance Programs (OFCCP), the DOL agency charged with enforcing Executive Order 11246's affirmative action regulations for federal government contractors also has announced plans to strengthen enforcement of its regulations. In a December 2009 web chat, OFCCP Director Patricia Shih reported that the agency is "hard at work on three rules that will benefit the American worker (Maurer, 2009 A).

At the Wage and Hour Division, in addition to increasing overall enforcement of the division's regulations, the WHD also announced that it plans to update its child labor regulations, review the implementation of the new military family leave amendments, and to update its recordkeeping regulations that will be designed to "foster more openness and transparency by demonstrating employers' compliance with minimum wage and overtime requirements to workers" (Maurer, 2009 A). Recordkeeping issues have been a perennial problem for employers over the years and hopefully the proposed updating will facilitate employer efforts in this area.

RECOMMENDATIONS FOR EMPLOYERS

With the ever increasing regulatory burden that employers of all types and sizes are required to bare, the need for additional resources to facilitate compliance efforts will be substantial. Given the ever increasing cost associated with not complying with laws enforced by the DOL and other laws impacting human resource decision making, failure to support compliance efforts is not an option. Further, failure to take a proactive approach to support effective compliance decision making can cause employers to sustain financial and employee relations losses. This may threaten their survival as American businesses attempt to emerge from lingering economic difficulties. Economic downturns and high unemployment have often been cited as causes of the increasing number of wage and hour complaints, discrimination, and wrongful discharge allegations showing up in government agency reports and litigation studies. The standard advice for employers that want to reduce their exposure to these types of allegations and litigation is to find and fix problems with the employers' compliance efforts before an employee's attorney or a government agency gets involved. Preventive audits can go a long way to help employers reduce their exposure. Whether to examine policy manuals, payroll practices, or I-9 documentation, employers should conduct at least an annual audit of their human resource decision making and legal compliance efforts. In addition to on-going audits, employers must continually train individuals involved in human resource decision making as new regulations and guidance affecting their organizations is available. The title of a recent HR Daily Advisor Tip reporting on the results of a recent study dealing with wage and hour violations should get the attention of all employers: "DOL, EEOC, and Your Employees' Attorneys are Reading this Report" (CORT, 2009). Government agencies have for years required employers to prominently post notices regarding employees' rights in the workplace. With the taboo on attorney marketing efforts on TV, the internet, and roadside billboards all but abandoned, especially by members of the plaintiffs' bar, more and more employees are aware of potential problems with respect to how their employer's human resource policies and practices may not be consistent with government regulations. With the notoriety that large damage awards against employers can generate and the general unfavorable light that many businesses have been held in during the country's difficult economic times the recipe for even more challenges to human resource decision maker decisions is present. Employers that allocate resources to monitor government agencies' initiatives, support training of decision makers and preventive audits of their compliance efforts will be in a better position to meet challenges created by the changes in enforcement focus that are clearly coming with new leadership in our nation's capital.

REFERENCES

CORT (2009). *DOL, EEOC, and your employees' attorneys are reading this report*, downloaded 12/7/2009 from http://hrdailyadvisor.blr.com/?source=HAC&effort=7 .

FY2010 *Congressional Budget Justification* (2009). Occupational safety and health administration, downloaded, 2/10/2010 from http://www.dol.gov/dol/budget/2010/PDF/CBJ-2010-V2-08.pdf .

Gurchiek, Kathy (2009). Changes are coming, dol secretary solis promises, *HR News*, downloaded 12/1/2009, from http://www.shrm.org/publications/hrnews/pages/solispromises.aspx

Leonard, Bill (2009). Q &A with U.S. labor secretary Hilda Solis, *HR News*, downloaded 11/20/2009, from http://www.shrm.org/Publications/HRNews/Pages/SolisInterview.aspx .

Maurer, Roy (2009 A). *Heightened enforcement a top DOL priority in 2010*, downloaded 1/28/1010 from http://www.shrm.org/hrdisciplines/benefits/Articles/Pages/Enforcem... .

Maurer, Roy (2009 B). *OSHA announces goals, regs for 2010*, downloaded 1/28/2010 from http://www.shrm.org/hrdisciplines/safetysecurity/articles/Pages/O... .

Maurer, Roy (2009 C). DOL announces goals for 2010, *HRNews*, downloaded 1/28/2010 from http://www.shrm.org/Publications/HRNews/Pages?DOLAnnouncesG... .

Meneghello, Richard (2010). The year in labor & employment law, from A to Z, *Labor Letter*, Fisher & Phillips LLP, downloaded 1/28/2010 from http://www.laborlawyers.com/showarticle.aspx?The-Year-In-Labor...

Seyfarth Shaw LLP (2010). Press release, *Seyfarth Shaw's Sixth annual workplace class action litigation report shows unabated climb in financial stakes in workplace class action litigation*, downloaded 2/9/2010, from http://www.seyfarth.com/index.cfm/fuseaction/news_pub.news_pub_de... .

Smith, Allen (2009). *Increased enforcement of labor laws top priority in budget*, downloaded 1/20/2010 from http://www.shrm.org/LegalIssues/FederalResources/Pages/IncreasedE... .

WHD News Release (2009). *Statement by US Secretary of Labor Hilda L. Solis on wage and hour division's increased enforcement and outreach efforts*, downloaded 11/24/2009 from http://www.dol.gov/opa/media/press/whd/whd20091452.htm .

SEXUAL HARASSMENT IN THE WORKPLACE

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ABSTRACT

Sexual harassment is a huge concern; if left unattended it possibly will cost orgnizations thousands, if not millions, of dollars. In 1980 the Supreme Court said that sexual harassment was a breach of the Civil Rights Act of 1964. From the years 1978 to 1980, sexual harassment cases brought in opposition to companies costing them $189 million. This amount elevated to $267 million from 1985-1987. Even though this number jumped considerably, the speed of sexual harassment had not. Damages are immediate. Sexual harassment can cause damage to a company's representation, status, customers, as well as their proceeds. Sexual harassment consists of unwelcome sexual advances, request for sex, as well as other physical or verbal conduct of a sexual nature. Sexual harassment divides this legal wrong into two main categories. The first category is quid pro quo and the second one consists of a hostile environment. Several things make an environment sexually hostile. An employee should follow several steps if she or he encounters a sexual harassment assault in the work place. An employer's liability depends on the type of harassment executed and the person who committed it. This can be based on two principles: tangible job action harassment and co-worker harassment. To escape or limit its liability for sexual harassment acts, an employer must have an effective policy that should include features such as definitions of sexual harassment, effective training on appropriate behavior, internal complaint procedure, and sanctions for violators and protection for victims. The awareness of sexual harassment has been increasing significantly throughout the years and companies must be conscious about the benefits of preventing sexual harassment.

INTRODUCTION/CONCLUSIONS

Future research is suggested based upon prior research and theory (Buckley and associates, 1992- present; Carland and associates 1984-present).

REFERENCES

Buckley, M.R., Carraher, S.M., Carraher, S.C., Ferris, G.R., & Carraher, C.E. (2008). Human resource issues in global entrepreneurial high technology firms: Do they differ? *Journal of Applied Management & Entrepreneurship*, 13 (1), 4-14.

Buckley, M., Fedor, D., Veres, J., Wiese, D., & Carraher, S.M. (1998). Investigating newcomer expectations and job-related outcomes. *Journal of Applied Psychology*, 83, 452-461.

Buckley, M., Mobbs, T., Mendoza, J., Novicevic, M., Carraher, S.M., & Beu, D. (2002). Implementing realistic job previews and expectation lowering procedures: A field experiment. *Journal of Vocational Behavior*, 61 (2), 263-278.

Carland, J. & Carland, J. (1993). The role of personality in new venture creation. *Entrepreneurship, Innovation and Change*, 2(2), 129-141.

Carland, J & Carland, J. (1995). The case of the reluctant client. *Journal of the International Academy for Case Studies*, 1(2), 76-79.

Carland, J. & Carland, J. (1997). A model of potential entrepreneurship: Profiles and educational implications. *Journal of Small Business Strategy*, 8 (1), 1-13.

Carland, J. & Carland, J. (2003). Pawn takes queen: The strategic gameboard in entrepreneurial firms. *Academy of Strategic Management Journal*, 2, 93-104.

Carland, J. & Carland, J. (2004). Economic development: Changing the policy to support entrepreneurship. *Academy of Entrepreneurship Journal*, 10(2), 104-114.

Carland, J. & Carland, J. (2006). Eminent domain: What happens when the state takes part of your land? *The Entrepreneurial Executive*, 11, 95-113.

Carland, J.A.C., & Carland, J.W. (1991). An empirical investigation into the distinctions between male and female entrepreneurs managers. *International Small Business Journal*, 9 (3), 62-72.

Carland, J.A., Carland, J.W., & Stewart, W.H. (1996). Seeing what's not there: The enigma of entrepreneurship. *Journal of Small Business Strategy* 7 (1), 1-20.

Carland, J., Carland, J.A., & Abhy, C. (1989). An assessment of the psychological determinants of planning in small businesses. *International Small Business Journal*, 23-34.

Carland, J., Carland, J., & Carland, J. (1995). Self-actualization: The zenith of entrepreneurship. *Journal of Small Business Strategy*, 30-39.

Carland, J.W., Carland, J.A., & Hoy, F. (1992). An entrepreneurship index: An empirical validation. Babson Entrepreneurship Conference, Fontainebleau, France.

Carland, J.W., Carland, J.A., Hoy, F., & Boulton, W.R. (1988). Distinctions between entrepreneurial and small business ventures. *International Journal of Management*, 5 (1), 98-103.

Carland, J.W. III, Carland, J.W., Carland, J.A., & Pearce, J.W. (1995). Risk taking propensity among entrepreneurs, small business owners and managers. *Journal of Business and Entrepreneurship*, 7 (1), 12-23.

Carland, J.W., Hoy, F., Boulton, W.R., & Carland, J.A.C. (1984). Differentiating entrepreneurs from small business owners: A conceptualization. *Academy of Management Review*, 9 (2), 354-359.

Carland, J.W., Hoy, F., & Carland, J.A.C. (1988). Who is an entrepreneur? is the wrong question. *American Journal of Small Business* 12 (4), 33-39.

Carraher, S.M. (1991). A validity study of the pay satisfaction questionnaire (PSQ). *Educational and Psychological Measurement*, 51, 491-495.

Carraher, S.M. (1991). On the dimensionality of the pay satisfaction questionnaire. *Psychological Reports*, 69, 887-890.

Carraher, S.M. (2005). An Examination of entrepreneurial orientation: A validation study in 68 countries in Africa, Asia, Europe, and North America. *International Journal of Family Business*, 2 (1), 95-100.

Carraher, S.M. (2008). Using E-Bay to teach global and technological entrepreneurship. *International Journal of Family Business*, 5 (1), 63-64.

Carraher, S.M. & Buckley, M. R. (1996). Cognitive complexity and the perceived dimensionality of pay satisfaction. *Journal of Applied Psychology*, 81 (1), 102-109.

Carraher, S.M. & Buckley, M.R. (2008). Attitudes towards benefits and behavioral intentions and their relationship to Absenteeism, Performance, and Turnover among nurses. *Academy of Health Care Management Journal*, 4 (2), 89-109.

Carraher, S.M., Buckley, M.R., & Carraher, C. (2002). Cognitive complexity with employees from entrepreneurial financial information service organizations and educational institutions: An extension & replication looking at pay, benefits, and leadership. *Academy of Strategic Management Journal*, 1, 43-56.

Carraher, S.M., Buckley, M. & Cote, J. (1999). Multitrait-multimethod information management: Global strategic analysis issues. *Global Business & Finance Review*, 4 (2), 29-36.

Carraher, S.M., Buckley, M., & Cote, J. (2000). Strategic entrepreneurialism in analysis: Global problems in research. *Global Business & Finance Review*, 5 (2), 77-86.

Carraher, S.M., Buckley, M., Scott., C., Parnell, J., & Carraher, C. (2002). Customer service selection in a global entrepreneurial information services organization. *Journal of Applied Management and Entrepreneurship*, 7 (2), 45-55.

Carraher, S.M. & Carraher, S.C. (2006). Human resource issues among SME's in Eastern Europe: A 30 month study in Belarus, Poland, and Ukraine. *International Journal of Entrepreneurship*. 10, 97-108.

Carraher, S.M., Carraher, S.C., & Mintu-Wimsatt, A. (2005). Customer service management in Western and Central Europe: A concurrent validation strategy in entrepreneurial financial information services organizations. *Journal of Business Strategies*, 22, 41-54.

Carraher, S.M., Carraher, S.C., & Whitely, W. (2003). Global entrepreneurship, income, and work norms: A seven country study. *Academy of Entrepreneurship Journal*, 9, 31-42.

Carraher, S.M., Gibson, J. W., & Buckley, M.R. (2006). Compensation satisfaction in the Baltics and the USA. *Baltic Journal of Management*, 1 (1), 7-23.

Carraher, S.M., Mendoza, J, Buckley, M, Schoenfeldt, L & Carraher, C. (1998). Validation of an instrument to measure service orientation. *Journal of Quality Management*, 3, 211-224.

Carraher, S.M. & Parnell, J. (2008). Customer service during peak (in season) and non-peak (off season) times: A multi-country (Austria, Switzerland, United Kingdom and United States) examination of entrepreneurial tourist focused core personnel. *International Journal of Entrepreneurship*, 12, 39-56.

Carraher, S.M., Parnell, J., Carraher, S.C., Carraher, C., & Sullivan, S. (2006). Customer service, entrepreneurial orientation, and performance: A study in health care organizations in Hong Kong, Italy, New Zealand, the United Kingdom, and the USA. *Journal of Applied Management & Entrepreneurship*, 11 (4), 33-48.

Carraher, S.M., Parnell, J., & Spillan, J. (2009). Customer service-orientation of small retail business owners in Austria, the Czech Republic, Hungary, Latvia, Slovakia, and Slovenia. *Baltic Journal of Management*, 4 (3), 251-268.

Carraher, S.M., Scott, C., & Carraher, S.C. (2004). A comparison of polychronicity levels among small business owners and non business owners in the U.S., China, Ukraine, Poland, Hungary, Bulgaria, and Mexico. *International Journal of Family Business*, 1 (1), 97-101.

Carraher, S.M. & Sullivan, S. (2003). Employees' contributions to quality: An examination of the Service Orientation Index within entrepreneurial organizations. *Global Business & Finance Review*, 8 (1) 103-110.

Carraher, S.M., Sullivan, S. & Carraher, S.C. (2005). An examination of the stress experience by entrepreneurial expatriate health care professionals working in Benin, Bolivia, Burkina Faso, Ethiopia, Ghana, Niger, Nigeria, Paraguay, South Africa, and Zambia. *International Journal of Entrepreneurship*, 9 , 45-66.

Carraher, S.M., Sullivan, S.E., & Crocitto, M. (2008). Mentoring across global boundaries: An empirical examination of home- and host-country mentors on expatriate career outcomes. *Journal of International Business Studies*, 39 (8), 1310-1326.

Carraher, S.M. & Welsh, D.H.B. (2009). *Global Entrepreneurship*. Dubuque, IA: Kendall Hunt Publishing.

Carraher, S.M. & Whitely, W.T. (1998). Motivations for work and their influence on pay across six countries. *Global Business and Finance Review*, 3, 49-56.

Chait, H., Carraher, S.M., & Buckley, M. (2000). Measuring service orientation with biodata. *Journal of Managerial Issues*, 12, 109-120.

Crocitto, M., Sullivan, S.E. & Carraher, S.M. (2005). Global mentoring as a means of career development and knowledge creation: A learning based framework and agenda for future research. *Career Development International*, 10 (6/7), 522-535.

Lockwood, F., Teasley, R., Carland, J.A.C., & Carland, J.W. (2006). An examination of the power of the dark side of entrepreneurship. *International Journal of Family Business*, 3, 1-20.

Paridon, T. & Carraher, S.M. (2009). Entrepreneurial marketing: Customer shopping value and patronage behavior. *Journal of Applied Management & Entrepreneurship*, 14 (2), 3-28.

Paridon, T., Carraher, S.M., & Carraher, S.C. (2006). The income effect in personal shopping value, consumer self-confidence, and information sharing (word of mouth communication) research. *Academy of Marketing Studies Journal*, 10 (2), 107-124.

Scarpello, V. & Carraher, S. M. (2008). Are pay satisfaction and pay fairness the same construct? A cross country examination among the self-employed in Latvia, Germany, the U.K., and the U.S.A. *Baltic Journal of Management*, 3 (1), 23-39.

Sethi, V. & Carraher, S.M. (1993). Developing measures for assessing the organizational impact of information technology: A comment on Mahmood & Soon's paper. *Decision Science*, 24, 867-877.

Sturman, M.C. & Carraher, S.M. (2007). Using a Random-effects model to test differing conceptualizations of multidimensional constructs. *Organizational Research Methods*, 10 (1), 108-135.

Sullivan, S.E., Forret, M., Carraher, S.M., & Mainiero, L. (2009). Using the kaleidoscope career model to examine generational differences in work attitudes. *Career Development International*, 14 (3), 284-302.

Williams, M.L., Brower, H.H., Ford, L.R., Williams, L.J., & Carraher, S.M. (2008). A comprehensive model and measure of compensation satisfaction. *Journal of Occupational and Organizational Psychology*, 81 (4), 639-668.

ETHNICITY/RACE AND GENDER EFFECTS ON ETHICAL SENSITIVITY IN FOUR SUB-CULTURES

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ABSTRACT

The paper expands ethics literature by asking participants to evaluate different scenarios involving ethical dilemmas. Data from a sample of 536 students show that ethical sensitivity varies among the four dominant ethnic/race groups in the United States. Consistent with other studies, results of this research supports the gender socialization approach and demonstrates that there are significant differences in ethical sensitivity between males and females.

Results of the study have important implications for both academic institutions and organizations developing training programs for business managers with diverse backgrounds. Robin (1980) argued, based on ethical relativism that moral norms vary among different cultures. Rules of contact in one culture might not be appropriate in another. Academic institutions and organizations should carefully consider the ethnic/race composition of their students/employees when developing curricula and ethics programs. These programs should account for moral norms and other differences in each culture.

LESSONS FROM CALIFORNIA'S COMPASSIONATE USE ACT

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ABSTRACT

In this paper, we will discuss California's recent experiment with medical marijuana. To that end, we will first discuss the history of marijuana use. Next we will discuss the history and current trend in federal marijuana regulation. We will then examine California's medical marijuana law. We will conclude with how other states have used California's attempt (and their mistakes) as a guide for policy.

In 1996, California made a bold experiment, to legalize the sale and use of marijuana for medical reasons. To be blunt, it was a good idea which lacked the detail necessary to make it work in a society of fifty million people.

In this paper, we will discuss California's recent experiment with medical marijuana. To that end, we will first discuss the history of marijuana use. Next we will discuss the history and current trend in federal marijuana regulation. We will then examine California's medical marijuana law. We will conclude with how other states have used California's attempt (and their mistakes) as a guide for policy.

HISTORY OF MARIJUANA USE

Marijuana has been used in numerous cultures for thousands of years without a fatality (Cohen, 2009; Parloff, 2009; Walker & Huang, 2002; Welch & Martin, 2003). Many studies confirm effectiveness of marijuana as a pain reliever (Cohen, 2009). Studies show marijuana relieves nausea and improves appetite for those getting chemotherapy (Gardiner, 2010).

However, all is not well. Besides the mental effects, the consumption of marijuana is harmful to fertility and quality of sperm (Brown, 2009). Marijuana now is five times stronger than in 1970s (Economist, 2009a). As a result of these worries and others, rather than legalization, most have favored heavy regulation of marijuana. Conservative icon William F. Buckley Jr. favored legalized but regulated marijuana (Vlahos, 2009).

Historically, marijuana was used as a medicine in America. In 1851, marijuana was regarded as a legitimate medical compound (Pharmacopoeia, 1851). Even big-pharma Eli Lilly sold cannabis in early 1900s as a painkiller (Parloff, 2009).

HISTORY OF U.S. MARIJUANA REGULATION

By 1991, the federal compassionate use of marijuana program had 13 patients, and stopped admitting new patients. Today just four patients are left, and continue to get free, federally grown

marijuana each month (Parloff, 2009). The University of Mississippi has the only federally approved marijuana plantation (Gardiner, 2010). Their supplies are sent to the four remaining approved patients.

In 1985, FDA approved Marinol, a prescription pill of THC (Gardiner, 2010; Parloff, 2009). However, this medicine has a slow response and takes a treatment period to work.

CURRENT FEDERAL MARIJUANA REGULATION

Obama the candidate promised to stop raiding dispensaries, claiming it was not a good use of resources (Vlahos, 2009). Obama the President has been decreasing the emphasis on state medical marijuana (Parloff, 2009).

Last year, DEA officers shut down 14 dispensaries and arrested 30 people in California (Welch, 2009b). However, Obama's administration has promised to relax prosecution of medical marijuana cases in states that allow its use (Dickinson, 2009). This problem is not going away any time soon. Fifteen more states are considering medical marijuana (Parloff, 2009).

TAX IMPLICATIONS

Harvard economist Miron estimates taxed and legalized marijuana could make $7 billion in tax and save $13.5 billion in law enforcement spending (Parloff, 2009). For California alone, the revenues from state marijuana tax could generate $1.4 billion each year (Economist, 2009a).

WAR ON DRUGS

Despite our forty year War on Drugs, the flow of drugs remains undiminished (Dickinson, 2009). And the collateral costs have continued to rise. Incarcerated drug offenders have increased 1200% since 1980 (Dickinson, 2009). Another unintended consequence of the War on Drugs is the enrichment of violent drug cartels. It has been estimated that legalized drugs would cut off 65% of Mexican drug cartel income (Dickinson, 2009).

Further, medical marijuana could save health care money, as pot is a substitute for many more expensive drugs (Parloff, 2009). Those against medical marijuana always claim the shortage of studies of marijuana's benefits. This too is a result of the war on drugs. Researchers trying to study marijuana face federal roadblocks (Gardiner, 2010). Ironically, researchers wanting to study LSD or ecstasy can find many suppliers approved by the FDA (Gardiner, 2010).

CALIFORNIA'S MEDICAL MARIJUANA

California was first state to authorize medical marijuana (Behring, 2006). California and Colorado are only states to allow personal cultivation (Vlahos, 2009). While California and more recent advocates allow for medical marijuana for the terminally ill, the California code allows for a catchall, "or any other illness for which marijuana provides relief" (Compassionate Use Act, 2009).

SALES ARE HUGE

In Los Angeles, California, one store averages $140,000 each month (Welch, 2009a). A store in San Diego sold $700,000 in six months (Welch, 2009a). This is ripe for the entrepreneur. In Oakland, a chain of four stores had sales of $19,600,000 in 2008 (Welch, 2009a). At one of the recent federal raids, DEA agents found $70,000 in cash and six guns (Welch, 2009b).

SALES TAX COULD BE HUGE

Now California wants dispensaries to pay sales tax (Parloff, 2009). Estimates of sales tax revenues for California are $220,000,000 per year (Parloff, 2009). Cities have started their own sales taxes. Oakland increased their city taxes on marijuana by 1500% (Parloff, 2009). Oakland's vote for city tax on cannabis got 80% approval (Economist, 2009a).

TOO MANY SELLERS

Estimate range from over 400 up to 1000 stores in Los Angeles alone (Welch, 2009a; Parloff, 2009). While Los Angeles is large, some comparisons are in order. There are more medical marijuana stores in Los Angeles than public schools (James, 2010). There are more medical marijuana stores in Los Angeles than taco stands (Welch, 2009a). There are three times more medical marijuana stores in Los Angeles than McDonalds (Parloff, 2009). As a result, the market is flooded with medical marijuana. It is easier for kids to get marijuana than alcohol (Dickinson, 2009).

SYSTEM HAS COLLAPSED

Besides the rampant growth of dispensaries, all of whom must sell to make a profit, other factors increase the amount of marijuana for sale. Doctors advertise to recommend marijuana for $200 (Parloff, 2009; Welch, 2009a). With the statute in California being so broad, a doctor could recommend pot for writer's block (Parloff, 2009).

The high competition has also led to some unintended effects. Some dispensaries give discounts to customers who do not drive to dispensary because it is greener (Parloff, 2009). Ride your skateboard over to the dispensary to save money!

Education has responded. Oaksterdam University is a new trade school devoted to medical marijuana (Green, 2009). By making marijuana abundant, while still technically illegal, the economists have been proven correct. Marijuana now costs $3000/pound, down 33% from a decade ago (O'Brien, 2009).

OTHER STATES RESPOND TO CALIFORNIA'S MISTAKES

We will now focus on other states' policies and how they have been affected by California's policy. Colorado approved medical marijuana in 2000 (Perez-Pena, 2009). There are only fifteen dispensaries in Colorado (Parloff, 2009), but they are planning a drive thru dispensary (Perez-Pena,

2009). Michigan marijuana patients can have 12 plants and 2.5 ounces of marijuana (Ananny, 2009). Two Missouri cities (Cliff Village and Columbia) have passed a local marijuana policy (Vlahos, 2009). New Jersey legalized medical marijuana with bipartisan support, but has only allowed six official dispensaries (Kocieniewski, 2010). New Jersey will be most restrictive law since my have specified condition and limit of two ounces per month (Kocieniewski, 2010). Interestingly, New Jersey will help subsidize marijuana, but insurance companies are not obligated to pay for it (Kocieniewski, 2010). New Mexico only has one dispensary and it is overwhelmed (Welch, 2009a). In Oregon, nearly I in 4 physicians has authorized a patient to grow their own pot (Parloff, 2009). Rhode Island approved medical marijuana sales in 2006 (Welch, 2009a). South Dakota is the only state to reject medical marijuana legislation (Vlahos, 2009).

CONCLUSION

California's example can provide needed information for a state wishing to experiment with medical marijuana. First, the state must regulate dispensaries and limit their number. Second, the state should define the conditions for which a patient can receive medical marijuana and not allow the expanded use. Third, the state should tax (heavily) the sales to generate funds for the unintended effects of the law.

REFERENCES

Ananny, L. (2009). Midwest medicinal marijuana. *Canadian Medical Assoc. Journal* 180.2, 162.

Behring, R. (2006). California takes a hit: The Supreme Court upholds congressional authority over the state-approved use of medical marijuana. 28 *University of Arkansas at Little Rock Law Rev.* (summer) 545-580.

Brown, O.M. (2009). Effects of cannabinoids. *Fertility Weekly* (June 29), 10.

Cohen, P.J. (2009). Medical Marijuana: The conflict between scientific evidence and political ideology. *Utah Law Review* 1, 35-104.

Compassionate Use Act. (2009). *California Health & Safety Code* section 11362.5.

Dickinson, T. (2009). A drug war truce? *Rolling Stone* 1081, 45-48.

Economist. (2009a). Puff, puff, pay. 392 (Aug. 8) 13.

Gardiner, H. (2010). Researchers find study of medical marijuana discouraged. *New York Times* (Jan. 19) 14.

Green, J. (2009). Cannabusiness. *Atlantic Monthly* 303.3, 23.

James, S. (2010). Some medical marijuana millionaires are turning to philanthropy. *New York Times* (Jan. 12) 23a.

Kocieniewski, D. (2010). New Jersey vote backs marijuana for severely ill. *New York Times* (Jan. 12) 1.

O'Brien, J.M. (2009). 52-week high. *Fortune* 159.1 (Jan. 19) 33.

Parloff, R. (2009). How pot became legal. *Fortune* 160.6, 140-162.

Perez-Pena, R. (2009). Wanted: Pot critic with shrewd taste and medical need. *New York Times* (Oct. 5) 6.

Pharmacopoeia of the U.S. (1851). *Extractum cannabis* (third ed.).

Stroup, K. and P. Armentano. (2002). The problem is pot prohibition. *Washington Post* (May 4) A19.

Sullum, J. (2009). DEA tax collectors. *Reason* 41.3, 6.

Vlahos, K.B. (2009). Higher law. *The American Conservative* (March 9) 23-24.

Walker, J.M. and S.M. Huang. (2002). Cannabinoid analgesia. *Pharmacology & Therapeutics* 95, 127.

Welch, W. (2009a). Medical pot sales booming. *USA Today* (Sept. 30) E3.

Welch, W. (2009b). Raids halt 14 sellers of medical pot. *USA Today* (Sept. 11) 3a.

Welch, S.P. and B.R. Martin. (2003). The pharmacology of marijuana, in *Principles of Addition Medicine*, third ed., 249 (A.W. Graham, et al., eds.).

INTEGRATING ETHICS IN MULTIPLE BUSINESS COURSES

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ABSTRACT

Management literature and the business press are implicating Business Schools in the preparation of decision makers in organizations who are perceived as rewarding executives for bad behavior. This paper responds to the challenge by promoting the integration of ethical principles in multiple courses within a degree programs to raise and expand a student's level of awareness of factors involved in ethical decision making.

Using a collection of concepts, this paper defines ethics as a code of behavior that restricts self interest for the greater long term good of society (Sharp, 2005); the use of a moral base of value related rules in which individuals as well as businesses make judgments about what is good and bad or right and wrong related to human conduct and relationships (Carlson et al., 2002), (Kashman, 2005) and (Fuqua and Newman, 2006),

This paper highlights key ethics models from literature to encourage professors who are reluctant to overtly address ethics in classroom or online courses and to equip the professor not schooled in philosophy with some basic principles to raise ethical awareness among students. In so doing, several assumptions are made to guide the approach about how to teach ethics: (1) no professor should impose his/her values onto students; (2) students exhibit different levels of personal and social development and could even be starting at zero; (3) students are not learning ethics from traditional sources such as parents, school and religious affiliations; and (4) evidence of the importance of teaching ethics continues to mount, thus calling for curriculum action.

This paper concludes by making several recommendations to faculty including creation of course opportunities for student reflection on personal ethical experiences in which decisions harmed or prevented harm to another; relating personal ethical behavior to organizational ethical behavior; and designing assignments based on elements of the highlighted models.

THE SUPREME COURT EXAMINES PREEMPTION IN ITS 2008 TERM

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ABSTRACT

During its 2008 term, the Supreme Court issued opinions in four cases involving preemption. However, whereas last term the Court ruled in favor of preemption, this term it ruled in favor of state law by a 6 to 3 decision in its most preemption publicized case. . In the other four cases the majority ruled in favor of preemption, thereby following the trend which it set last term.

INTRODUCTION

The first case, Altria Group, Inc. v. Good (Altria, 2008), was brought by Maine cigarette smokers who alleged that they had smoked cigarettes labeled "light" for over 15 years. They claimed that Phillip Morris, owned by Altria, had committed fraud in advertising that light cigarettes delivered less tar and nicotine than regular brands which violated the Maine Unfair Trade Practices Act. The district court dismissed the case on a motion for summary judgment by Altria on the ground that the smokers' state law claim was preempted by the Federal Cigarette Labeling and Advertising Act. The court of appeals reversed the district court and the supreme court affirmed by a 5-4 decision that the federal statute neither expressly nor impliedly preempted the fraud claims of the smokers (Altria, 541). The second case, Kennedy v. Plan Administrator for Dupont Savings and Investment Plan (Kennedy, 2009), involved the plan administrator delivering a deceased employee's pension benefits, consisting of $400,000, to his divorced spouse rather than to his estate. The employee had married and designated his spouse as beneficiary of his pension plan. Twenty-three years later they divorced and his former spouse executed a document in the state divorce proceedings renouncing any and all interests in retirement or pension plans of the employee. The employee did not execute any documents removing his former spouse as a beneficiary under his plan. He did, however, execute a new document designating his daughter as beneficiary under Dupont's pension plan. When her father died, the daughter was named executrix of his estate and she asked Dupont to deliver the savings and investment plan funds to the estate. Instead, Dupont based on the designation of the former spouse as beneficiary delivered the funds to her. The daughter sued as executrix and won at the trial court, but was reversed by the court of appeals. Associate Justice Souter, writing for a unanimous court affirmed the court of appeals, noting that ERISA preempted state law and that the plan administrator did what ERISA required him to do, which was to follow the plan documents. The court said the employee had to file a document removing his former spouse as beneficiary (Kennedy, 869). The third case, Wyeth v. Levin (Wyeth, 2009), involved a Wyeth drug used to treat nausea. The drug could be administered through an IV-push or IV-drip method into the patient's vein. However, if injected into an artery, it would cause gangrene and amputation. Ms. Levine, a guitar performer by profession, went to a clinic for a

migraine. She was given Wyeth's Phenergan for her nausea. Unfortunately, it entered her artery, caused gangrene, and resulted in the amputation of her entire right forearm. Levine sued Wyeth based on negligence and product liability. Wyeth moved for summery judgment based on preemption by the Food and Drug Administration Act. It was denied and a trial was held before a jury which awarded Levine compensation. The Vermont Supreme Court affirmed holding that the FDA's labeling requirements for Phenergan did not conflict with the jury's finding that Wyeth could have warned against an IV-push without prior FDA approval. Associate Justice Stevens writing for a 6-3 majority affirmed the Vermont Supreme Court (Wyeth, 1191-1193). The fourth case, Cuomo v. Clearing House Association, L.L.C. (Cuomo, 2009), involved the Office of the Comptroller of the Currency and a banking trade group filing suits to block the New York Attorney General, Andrew Cuomo, from seeking non-public information from several national banks about their lending practices to determine whether they had violated the state's fair-lending laws. The trial court granted an injunction prohibiting Cuomo from demanding records. The court of appeal affirmed. Associate Justice Scalia, writing for a 5-4 majority, held that the National Bank Act preempted states from regulating banks as they would corporations. The job of overseeing banks was granted to the Comptroller of the Currency through the National Bank Act. However, states did have the right to enforce their laws (Cuomo, 2009).

CONCLUSION

Professor Zellmer in her article, Preemption by Stealth, concludes that the Supreme Court under both Chief Justice Rehnquist and Chief Justice Roberts was quick to conclude that federal statutes which contained both preemption and savings clauses neutralized each other thereby allowing the court to look outside congressional objectives and place emphasis on pro-business and pro-preemption arguments supported by regulatory agencies, which want to avoid responsibility for harm cause by products and favor their charges (Zellmer, 2009). The cases decided in the 2008 term were more in favor of preemption than against.

REFERENCES

Altria Group, Inc. v. Good, 129 S.Ct. 538 (2008).

Cuomo v. Clearing House Association, L.L.C. 129 S.Ct. 2710 (2009).

Kennedy v. Plan Administrator for Dupont Savings and Investment Plan, 129 S.Ct. 865 (2009).
Wyeth v. Levin, 129 S.Ct. 1187 (2009).

Zellmer, Sandra. *Preemption by stealth*. 45 Hous. L. Rev. 1659. Retrieved July 30, 2009, from http://www.lexisnexis.com/us/Inacademic/frame.dl?tokenKey=rsh-20.42989817& target=results_