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THE COURTHOUSE PERSONNEL DEPARTMENT

CONTROL THE BULLY OR YOU MAY PAY

We often receive telephone calls from employees who believe their employer is discriminating against them. When the employee describes the misconduct, it often appears the employee is being bullied by a supervisor. If the bullying is not racially or sexually motivated, it does not amount to employment discrimination. Accordingly, there are few, if any, options for the employee to pursue to prevent the conduct other than seeking new employment. The recent Indiana case of *Raess v. Doescher*, however, suggests that employers should address inappropriate conduct by a bully or they may pay.

Joseph Doescher ("Doescher") was a perfusionist at St. Francis Hospital ("St. Francis"). Doescher worked with Dr. Daniel Raess ("Dr. Raess"), a heart surgeon. Dr. Raess confronted Doescher when he learned Doescher complained to St. Francis about Dr. Raess's treatment of perfusionists. During the confrontation, Dr. Raess charged Doescher with clenched fists, piercing eyes, beet-red face and popping veins, screaming and yelling at him. Doescher retreated believing that Dr. Raess was going to hit him. Dr. Raess did not strike Doescher, but left the room screaming "you're finished, you're history."

As a result of the confrontation, Doescher was unable to return to work because Doescher suffered a "major depressive disorder with anxiety and panic disorder." Doescher filed suit against Dr. Raess, alleging a cause of action for assault and intentional infliction of emotional distress. At trial, the jury entered a judgment against Dr. Raess in the amount of \$325,000. Dr. Raess appealed.

During the trial, Doescher presented evidence describing Dr. Raess as a "workplace bully." Dr. Raess objected, arguing that whether he was a bully was irrelevant to whether his conduct constituted an assault or had intentionally caused Doescher emotional distress. The Indiana Supreme Court disagreed, finding Dr. Raess's behavior was an issue in determining whether an assault or the intentional infliction of emotional distress had occurred. According to the Indiana Supreme Court, the phrase "workplace bullying," like other terms used to characterize a person's behavior, was an appropriate consideration in determining the issues before the jury. Thus, the \$325,000 judgment against Dr. Raess was allowed stand.

If you have a question about disciplining a workplace bully, please telephone a member of the firm.

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Rieck and Crotty, P.C. publishes ***THE COURTHOUSE PERSONNEL DEPARTMENT*** bi-monthly to keep employers and employees advised of current issues and decisions throughout the United States relating to employment law matters which may impact our readers. If you desire additional information concerning any of the articles, please telephone a member of the firm.

IT IS TIME TO REVIEW AND REVISE

YOUR COMPANY'S NONFRATERNIZATION POLICY

If your company has issued a nonfraternization employment policy, dicta in the recent case of *Ellis v. UPS*, suggests that it may be time to review and rewrite the policy if it is unnecessarily prohibitive within the context of your business operations.

In *Ellis*, the United Parcel Service's ("UPS") nonfraternization policy prevented a manager from having a romantic relationship with an hourly employee. The purpose of the policy was to prevent favoritism and/or the perception of favoritism. The policy extended to workers outside of the manager's supervisory authority because UPS frequently transferred managers and UPS was concerned that, after a transfer, a manager could be supervising an hourly employee with whom the manager had a romantic relationship.

Gerald Ellis ("Ellis"), an African American, Hub Supervisor for UPS, began dating a white fellow employee. After a 4-year relationship, they became engaged and were married a year later. Several months after his marriage, Ellis was advised by UPS that his employment was being terminated because he violated the nonfraternization policy even though he had previously disclosed his relationship to UPS. Ellis filed suit, alleging he was terminated because of his race and because his wife was white. While the Court ruled in favor of UPS, employers should note the Court's opinion of UPS's policy:

In closing, we emphasize that our decision today should not be construed as an endorsement of the UPS nonfraternization policy. When a company like UPS runs expensive ads that ask "What can Brown do for you?" it might be wise for it to ask if this policy is really worth all of the fuss this case has created. As we (previously) observed . . . :

As the work force grows and people spend more of their time at work, the workplace inevitably becomes fertile ground for the dating and mating game. It is certainly not unusual, and it may even be desirable, for love to bloom in the workplace. Contiguity can lead to sexual interest, which can lead to soft music, candlelight dinners, serious romance, and marriage, or any stops along the way.

. . .

Although UPS, for the reasons we have stated, comes out on top in this case, love and marriage are the losers. Something just doesn't seem quite right about that.

Given the Court's opinion of UPS's policy, employers would be well served to review their nonfraternization policy to be sure it is not overly restrictive. If your company would like to review its nonfraternization policy, please telephone a member of the firm.

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Be sure to visit our website at www.riECKcrotty.com to read prior issues of *The Courthouse Personnel Department* and *A Potpourri*.