WORKRIGHTS NEWS

NATIONAL WORKRIGHTS INSTITUTE

Spring-Summer 2005 **National Workrights Institute Newsletter** Volume I, No. One

Welcome to the first edition of the National Workrights Institute's brand new newsletter, "Workrights News." In this first installment of our newsletter we hope to bring you up to date on some of the very latest activities of the National Workrights Institute. We are working on a number of issues and programs this year. We hope you find them as exciting as we do.

Jeremy Gruber, Legal Director
National Workrights Institute

National Workrights Institute staff

Video Surveillance

The National Workrights Institute is working with local counsel in Georgia on a privacy claim in a highly invasive workplace monitoring case. In 1999, Atlas Cold Storage of Pendergrass, Georgia installed a video surveillance system throughout its plant, including in the restrooms in response to nonspecific rumors that drugs were being sold. The company informed employees that they were being constantly monitored. According to plant employees the manager would regularly remind them "there's not anywhere you can go where I can't see you." He is also said, "I'm going to watch you everywhere-everywhere you go. There's cameras in places y'all don't know about.

In 2001, a female employee noticed a ceiling tile askew in the women's restroom. An investigation discovered multiple video cameras which were attached to a video cassette recorder and modem and a monitor in the manger's office. Until its discovery, the monitoring had been occurring on a continuous basis for over two years.

Our plaintiff's include a group of over 20 women who had used the restroom over the specified period of monitoring, including a number of women who were not even employees. The case recently survived summary judgment proceedings. We will keep you updated as it proceeds.

Take Action

Recently Congressman Petri (R-WI) and Congressman Andrews (D-NJ) introduced a bipartisan bill, HR 582 The Employee Changing Room Privacy Act, that would make it illegal for employers to utilize audio and video monitoring in highly private areas of the workplace such as bathrooms and locker rooms. This Act is an important step towards balancing the concerns of industry with the legitimate privacy concerns of employees and recognizing basic decency in the workplace.

While some video cameras may be necessary for security purposes, employers have often installed cameras in private areas that are unjustifiable. Many of these devices are specifically targeted against women. No one should be required to endure such workplace conditions

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The National Workrights Institute is working hard to push this bill through Congress. It is an uphill battle, though, and we need your help. Please contact your member of the House of Representatives and tell them to support this important bill.

NWI Action Alert:

Contact your Congressman by calling (202) 549-2500
or on the Web at http://www.house.gov

Genetic Information Nondiscrimination Act

This is an exciting year for federal genetic nondiscrimination legislation. As many of you are aware, this legislation has been a major priority for the Institute for many years. While the extraordinary breakthrough in the sequencing of the human genome introduces vast opportunities for medical progress, genetic nondiscrimination legislation is necessary to allow individuals to take full advantage of these opportunities. Genetic nondiscrimination legislation will reduce the likelihood of genetic information being misused in employment as well as health insurance decision-making. For the first time discrimination is not being limited to a particular group of people. Genetic mutations exist in every person; as the predisposition to more and more diseases and conditions are linked to specific genetic mutations, we are all at risk of genetic discrimination

The Coalition for Genetic Fairness, a coalition of over 150 patients groups, civil rights organizations and disability groups and industry founded by Institute legal director Jeremy Gruber is leading the campaign to enact federal genetic nondiscrimination legislation. We have instituted significant changes this year in the Coalition and in our approach to Capitol Hill to ensure greater chances of success in this current session of Congress. This multifaceted approach includes involving all groups adversely affected by genetic discrimination from companies to consumers. To this end we have nearly doubled the amount of member organizations in the Coalition. We have reached out to the civil rights community for greater participation through the Leadership Conference on Civil Rights. In particular we have welcomed interested members of industry into the Coalition, including two on our executive committee. In a Republican dominated Congress, this has already proved immeasurably important in repositioning this bill away from the anti-business labels the Chamber of Commerce had to some degree been effective in promoting. In addition we have hired outside lobbying consultants with extensive connections on Capitol Hill and in the business community to aid us in being more effective advocates. The Institute has played a significant role in particular in providing research and background on the employment aspects of this legislation

We have been particularly diligent to anticipate roadblocks and work constructively with those individuals and groups that opposed similar legislation in previous years. For example we have worked hard to ensure that for the first time identical copies of the Genetic Nondiscrimination Act were introduced in each chamber of Congress. And we have effectively engaged the Chamber of Commerce in discussions for some months.

We have helped assemble a bipartisan team of lead sponsors in the House of Representatives for the first time. Our new lead sponsors for H.R. 1227 include Judy Biggert (R-Il), Bob Ney (R-OH), Anna Eshoo (D-CA) and Louise Slaughter (D-NY). This bipartisan team is well situated on the key committees with oversight on this legislation , are well respected in the House of Representatives and have already shown themselves to be tireless champions of this legislation. We have better structures in place now to communicate directly with Congressional leaders to ensure that proper bipartisan support continues to grow.

We already have considerable momentum in this session of Congress. On Feb 14, S.306, the Genetic Information Nondiscrimination Act, passed in the Senate. 98 - 0. This was an overwhelming bipartisan victory that we are working hard to replicate in the House. Shortly after on Feb 16, President Bush issued a Statement of Administration Policy supporting S.306 and promising to sign such legislation if it reached his desk. With our focus now squarely in the House of Representatives we currently have 101 cosponsors and growing as we continue to target new sponsors on a daily basis. We are currently meeting with committee heads in the committees of jurisdiction and have made remarkable headway.

We are more optimistic than ever before of success in our efforts but much hard work remains ahead of us.

Drug Testing of Government Employees

The National Workrights Institute has joined with the ACLU of Oregon in pursuing a claim against the City of Woodburn for across the board drug testing of city employees. Indiscriminate, suspicionless drug testing is both unfair and unnecessary. It is unfair to force workers who are not even suspected of using drugs, and whose job performance is satisfactory, to "prove" their innocence through a degrading and

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uncertain procedure that violates personal privacy. Such tests are unnecessary because they cannot detect impairment and, thus, in no way enhance an employer's ability to evaluate or predict job performance. In jobs where impairment of performance might directly affect safety and where employees work away from supervision, easy to use tests which actually measure impairment are available to employers Random, suspicionless drug testing of private employees in the United States is rampant with limited restraint by a few state drug testing statutes and the Americans with Disabilities Act. Drug testing by government entities of public employees, though, is subject to constitutional limitations. The Supreme Court in Skinner and Von Raab, has held that the government is allowed to conduct drug tests without individualized suspicion only when there is a "special need" that outweighs the individual's privacy interest. In Skinner, the court found that public safety was such a special need. In Von Raab, the court found a special need in relation to customs agents who carry firearms or are directly involved in drug interdiction. Subsequent decisions on public employee drug testing have further defined this relatively small exception to normal Fourth Amendment principles.

Nevertheless, some municipalities have been moving in recent years to enact random drug testing programs of all employees regardless of whether their job description arguably falls under the aforementioned exception. The city of Woodburn is one of them. In February of 2004, the city of Woodburn offered our plaintiff a position as a page for the Woodburn public library conditioned on a pre-employment drug and alcohol test. In addition the city required plaintiff to sign a "personal history inquiry authorization, release and waiver" to permit a personal investigation of the plaintiff without any limitation and release the city from any liability associated with furnishing the information requested. Plaintiff expressed her belief that the drug and alcohol screening and possibly elements of the background check violated her constitutional right to privacy. She did give permission for the city to contact previous employers, academic institutions, furnished references and offered additional ones upon request. Shortly after the city withdrew its offer of employment.

To date, the Institute has played a crucial role in pursuing this case. Extensive research, memos and discussions with the Oregon ACLU by Institute legal director Jeremy Gruber convinced them of the importance and merit of the claim. The case is currently in its initial stages of discovery and we will update you as it proceeds.

Institute Fights for Fair Arbitration

Millions of Americans must give up their right to sue their employer in order to get a job. Over 20% of all employers now have clauses in their standard employment contracts which waive the right to take the company to court under any circumstances. An employee who has been sexually harassed, or discriminated against because of their race, must take their complaint to an arbitration system that is designed and controlled by their employer.

While arbitration has much to offer (primarily lower cost and faster decisions), such forced arbitration is unfair. No one should have to give up their right to go to court in order to get a job. Moreover, allowing one party to the arbitration to control the system is an invitation to unfairness.

The Institute has fought mandatory arbitration for many years. In Adams v. Circuit City Stores, we submitted an amicus brief to the United States Supreme Court arguing that only voluntary agreements to arbitrate ought to be enforceable. The Court, however, upheld involuntary arbitration.

Faced with judicial insensitivity to this injustice, progressive organizations turned to Congress. Senator Kennedy and Congressman Kucinich introduced the Civil Rights Procedures Protection Act, which would require all agreements to arbitrate statutory employment disputes be voluntary. Institute President Lewis Maltby testified before the Senate Committee in support of the Act. The current Congress, however, has shown little interest in this legislation.

We have made great progress, however, through the American Bar Association. The ABA has created the Due Process Protocol for Employment Arbitration. The Protocol contains an extensive set of rules for employment arbitration to ensure that the process is fair. Institute President Lewis Maltby was a principal author of the Protocol. He also held extensive discussions with the leadership of the American Arbitration Association and other leading arbitration providers and helped persuade them to conduct their proceedings in compliance with the Protocol. Today, all major arbitration providers comply with the Protocol.

The Protocol has also been well received by the courts. Many (but not all) courts have required employment arbitration systems to comply with provisions of the Protocol. For example, in Phillips v. Hooters the Fourth Circuit Court of Appeals refused to enforce an arbitration agreement where the employer had the unilateral ability to select the arbitrator.

This progress does not solve the problem of people being forced into arbitration against their will. We will continue to press for legislation requiring arbitration to be voluntary. But most people today who arbitrate an employment dispute receive a fair hearing, an important step forward in which the Institute played an important part.

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❑ Okay As Is
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SUPPORT
The Eleanor Roosevelt Society

Bringing Human Rights to the Workplace

Born of privilege, Eleanor Roosevelt learned first hand about the lives of workers as a volunteer in the Rivington Street Settlement House in New York. She became a member of the National Women's Trade Union League in 1922 and a symbol for fairness and dignity for generations of American workers.

Which is why The National Workrights Institute chose her name for its giving society for major donors.

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