



WORKRIGHTS NEWS

NATIONAL WORKRIGHTS INSTITUTE



Fall-Winter 2005/2006

National Workrights Institute Newsletter

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Institute Honored

The National Workrights Institute was honored for its work to expand legal protection for human rights in the American workplace at an event held at the National Woman's Democratic Club in Washington D.C. Special guest speakers included AFL-CIO President John J. Sweeney and Congressman Rush Holt. The event was hosted by the AFL-CIO, Communications Workers of America, American Income Life Insurance Company, American Rights at Work, Jules Bernstein and Linda Lipsett, Steve Schlossberg and Theodore St. Antoine. Former CWA President Morty Bahr served as master of ceremonies. The event was well attended and included the Executive Director of the ACLU Washington Legislative Office, the Director of Americans for Democratic Action, representatives of the National Labor College, national unions and several members of Congress. It was a truly exciting day for the National Workrights Institute as we continue to build upon our reputation in Washington D.C. and nationally. Your continued support makes



Congressman Rush Holt and AFL-CIO President John J. Sweeney

the work for which we were honored possible. As Congressman Holt said in his remarks, "If the National Workrights Institute did not exist, we would have to

create it." Our sincerest thanks for supporting and believing in workplace human rights.

NWI Surveillance Bill Enacted – Additional Efforts Underway

Recently the state of Rhode Island enacted a new law (S. 345) making it now illegal for employers in that state to use audio and video cameras and recording equipment in highly private areas of the workplace where workers are likely to undress such as bathrooms and locker rooms unless authorized by a court order. Such monitoring is the most invasive of any type of electronic monitoring in the workplace. All across the country, employers have installed cameras in areas that are completely indefensible. Many employers have installed hidden video cameras in locker rooms and bathrooms, sometimes inside the stalls. No one should be subjected to sexual voyeurism on the job. This law was a significant victory for worker's rights and

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the National Workrights Institute. Forming a partnership with the Rhode Island ACLU, the Institute helped draft the new law using our model statute on workplace privacy. The Institute also provided guidance and support materials throughout the legislative campaign.

This is only the beginning of a significant effort by the National Workrights Institute to eliminate video and audio monitoring of highly private workplace areas. Efforts are under way in other states and at the Federal level to duplicate our success in Rhode Island. The Institute has been closely working with members of the House of Representatives on the Employee Changing Room Privacy Act (HR 582). This bipartisan bill already has thirteen co-sponsors and growing. The lead sponsors, Representative Petri (R-WI) and Representative Andrews (D-NJ) are actively recruiting additional sponsors.

We are launching an effort in the courts as well. On December 1, Institute Legal Director Jeremy Gruber filed an amicus curiae brief in support of Gail Nelson in her suit for invasion of privacy against her former employer, Salem State College, in Massachusetts for its policy of hidden video surveillance that captured her undressing. (Case No. SJC-09519). The Court's decision in this case will have far reaching consequences for workplace privacy. If the court decides in favor of Ms. Nelson, it will represent the first definitive ruling of a state supreme court that workplace surveillance under certain circumstances is illegal. Such a ruling would be a crucial tool for workplace privacy claims nationwide.

In this case, Plaintiff Gail Nelson, an administrative assistant at Salem State College, was secretly videotaped at work, every day, for a period of between two and four months, without any justification for doing so. Although the hidden video surveillance equipment was installed ostensibly to investigate possible illegal entries after normal business hours, the camera was set up by college security officers without a warrant to tape-record all activities at the office for twenty-four hours a day. During this period, Ms. Nelson regularly changed clothes in her office space down to her underwear, whether it be for purposes of putting on work out clothes for a trip to the gym or more formal clothes for going out after work. She also had to partially remove her clothes for the purposes of applying a topical prescription medication.

Since her supervisor and her co-workers knew that she sometimes changed her clothes at the office, Ms. Nelson took great pains to protect her privacy when engaging in those activities, including making sure no one else was in the larger office space at the time, locking the front door, and listening carefully for anyone approaching.

Her attempts at protecting her privacy were to no avail, though, as the hidden video camera installed by the defendants taped her every action, including her private activities in the private areas of the office, before, during and after regular business hours, without her knowledge. The secret videotaping, which never revealed any illegal or unauthorized activity, was never ordered to be halted at any time by any of the defendants, and the video surveillance equipment was still in place in Ms. Nelson's workplace when it was discovered accidentally by one of her co-workers. Numerous employees of the College viewed the secretly made videotapes on which Ms. Nelson appeared. No steps were ever taken to minimize the intrusiveness of the surveillance.

We will update you as the case proceeds.

Institute Wins Victory in Drug Testing Case

On November 14, the United States District Court for the District of Oregon ruled in favor of the Plaintiff Janet Lanier in her suit against the city of Woodburn for its random drug testing program. This was a victory for workplace privacy and for the National Workrights Institute.

The city of Woodburn offered Ms. Lanier a position as a library page, but withdrew the offer when she refused to take a drug test because she believed that it violated her constitutionally protected right to privacy.

Federal courts have consistently ruled that public employees can only be forced to take a drug test if there is reason to suspect them of drug abuse, or if they are in a safety sensitive position. Some courts have held, however, that applicants for employment have no right to privacy regarding drug testing.

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The Oregon ACLU approached the Institute and asked for guidance on the legality of Woodburn's policy. Institute Legal Director Jeremy Gruber conducted extensive legal research and drafted a memorandum arguing that applicants for employment for government positions enjoyed the same protection as current employees against random drug testing. Using this memo, the ACLU filed suit on Ms. Lanier's behalf. The Institute provided substantial guidance and materials throughout the progression of the case.

The court's decision not only protects the privacy rights of employment applicants in Oregon, but also provides a clear precedent that strengthens the privacy rights of applicants in other states as well.

NWI in the News – Lifestyle Discrimination

The National Workrights Institute staff have participated in over 2,000 print, radio, and television interviews over the course of its existence. This year, in particular, Institute staff have done a significant number of interviews on the issue of lifestyle discrimination.

Most prominent was the appearance of Lewis Maltby, Institute President, on an episode of the CBS news magazine "60 Minutes" this October. In an in depth interview with "60 Minutes" correspondent Morley Safer, Lew discussed the privacy concerns and implications of employers making employment decisions based upon the off duty, legal conduct of their employees. The featured employer in the piece was the Weyco company based in Michigan. Harold Weyers, founder and CEO of Weyco, had made the decision to fire several employees who were smokers; not for smoking on the job but for smoking at home on their private time.

In a separate interview this November, NWI Legal Director Jeremy Gruber debated the legal counsel of Weyco on the CNBC program "Wall Street Journal Report." Institute staff have discussed lifestyle discrimination on CNN and in most major news outlets including the pages of the New York Times, Boston Globe, Newsweek magazine and well over twenty local and national radio shows including National Public Radio.

Many employers now refuse to hire people whose private lives are deemed "unhealthy," and a few even fire current employees who do not change their lifestyle to meet new company demands. Thousands of employers discriminate against individuals who smoke off-duty and there is indication that this practice is growing. A 2005 survey conducted by the Employment Law Alliance, the world's largest network of employment lawyers, discovered a culture of discrimination against those who are deemed overweight, unattractive or unconventional in appearance. The survey also revealed that 39 percent of Americans thought that employers should be allowed to discriminate on the basis of appearance and some 16 percent also felt that they had been discriminated against because of the way they look. Other employers refuse to hire people who drink alcohol, have high cholesterol levels, or ride motorcycles.

This type of discrimination is by no means limited to health. Many employees have been fired for their political views or engaging in what they believed to be protected speech. Lynne Gobbell of Moulton Alabama was fired for refusing to remove a Kerry for President bumper sticker from her car. Glen Hiller was fired from his company for attending a rally to re-elect the President and voicing his displeasure with administration policies. Employers have taken action against employees that publish unpopular views on the Internet. A January 2005 study by the Virginia-based Society for Human Resource Management found that 3 percent of employers have disciplined or fired employees for blogging from approximately May 2004 to May 2005.

The National Workrights Institute is working hard to stop this practice. What an employee does in their private life should not be the basis for employment decisions as long as the behavior is not job related. It is not only a gross invasion of privacy but contrary to the principles of a free society as well. The Institute has been a driving force behind a number of states that have enacted laws banning this practice and is intricately involved in initiatives pending in Michigan and Pennsylvania.



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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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- Special reports from the president and senior staff on the latest developments in workplace human rights.
- Invitations to participate in events with experts in workplace human rights.
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