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The newsletter of the Illinois State Bar Association's Section on Labor & Employment Law

Otto May, Jr. v. Chrysler Group LLC: Anatomy of the largest employment discrimination verdict in Illinois history

By Stephen E. Balogh, WilliamsMcCarthyLLP

(Steve Balogh handled all pre-trial matters, the motion for summary judgment and was second-chair to Attorney William C. Martucci of Shook, Hardy & Bacon, Kansas City, during trial. Thomas H. Dupree, Jr. of Gibson, Dunn & Crutcher LLP, Washington, D.C., is lead counsel on appeal. May was originally represented by Charmaine Dwyer, deceased, and was represented by Karen Doran and Deanne Medina at trial. Deanne Medina, of Oak Park, Illinois, continues to represent May on appeal).

Otto May, Jr. was employed as a pipefitter at an automobile assembly plant in Belvidere, Illinois, owned and operated by Chrysler Group LLC, known, oddly enough, as Belvidere Assembly.[1] Specifically, May was a skilled tradesman who worked within the paint department of the plant, in the maintenance department, taking care of the plant's equipment. The paint department, where the automobiles being assembled at the plant are painted, is over

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OSHA clarifies regulations: Third parties may act as the employees' "walkaround representative" during OSHA inspections

By Paul G. Prendergast and James S. Shovlin

The Occupational Safety and Health Administration ("OSHA") issued a letter of interpretation February 21, 2013 clarifying regulations regarding OSHA workplace inspections. The letter, written in response to Mr. Steve Sallman, a Health and Safety Specialist of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers' International Union, provided "a person affiliated with a union without a collective bargaining agreement or with a community representative can act on behalf of employees as a walkaround representative so long as the individual has been authorized by the employees to serve as their representative."[1]

Mr. Sallman's inquiry stemmed from a misguided belief that OSHA's policy only allowed union representatives to be the "employees' representative" when the inspection was conducted in a unionized workplace. OSHA addressed the belief by referencing a previous letter of interpretation dated March 7, 2003 (the "Racic letter"). OSHA stated that the Racic letter may have created some confusion about this issue and em-

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Otto May, Jr. v. Chrysler Group LLC: Anatomy of the largest employment discrimination verdict in Illinois history

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one million square feet on three levels with several miles of conveyors running through spray booths, ovens, finishing decks, etc. The main assembly plant is over 3.5 million square feet with nearly 18 miles of automobile conveyors and, when at full operational capacity, can push out a completely assembled car at a rate of one every 55 seconds, or over 1,000 cars every day.

Otto May's story

The saga began in 1998, when May claimed that a maintenance supervisor was treating him unfairly and badly because he is Cuban. With this complaint, May first went to the Office of Federal Contract Compliance Programs of the Department of Labor. May also complained to OSHA that he was being made to perform unsafe tasks by other supervisors, who he claimed also did not like him because he is Hispanic.

In May, 2002, May began to complain—always after the fact—that his cars (he owned several and also used rentals) were being vandalized in the employee parking lot. Next, in August, 2002, some graffiti appeared in a freight elevator in the plant which was targeted at May and another maintenance employee, implying that the two were in a gay relationship. The graffiti escalated and soon started appearing in other places within the paint department at Belvidere Assembly, and it became increasingly offensive, and anti-Semitic. By late September and October, graffiti had appeared on May's personal toolbox and in the paint department tool crib (a lockable storage room where he and other maintenance employees kept common tools and equipment), saying such things as "Die Cuban Fag Jew."

May complained vociferously to plant Labor Relations and Human Resources personnel and explained that he was not only Cuban but that his grandfather had emigrated to Cuba from Germany and was Jewish, so that he considered himself a "Messianic Jew." In addition to the graffiti, in September, 2002, May found a photocopied transcription of a George Carlin monologue with handwritten notes, such as "Go back to Cuba" and "Good Jew = Dead Jew" scribbled in the margins inside his personal toolbox. May next complained to the Anti-Defamation League, and filed charges of discrimination with the EEOC, in Chicago. In December, 2002, because he believed that he was being discriminated against and that management was doing nothing about the graffiti in retaliation for his many complaints, May filed suit in the U.S. District Court for the Northern District of Illinois, Western Division. His suit invoked Title VII and 42 U.S.C. § 1981, alleging discrimination and harassment on the bases of his race, Hispanic, national origin, Cuban, and religion, Jewish.

After filing charges, May also stopped complaining to plant personnel, and began simply calling either the local police department or plant security personnel who worked for a contractor. May later explained that he did not trust his union, the UAW, Local 1298, or Chrysler, and viewed both entities as wanting to be rid of him.

To make a long story shorter, the threatening and offensive notes as graffiti escalated through 2003, and even followed May when he transferred from the Paint department to the Final Assembly Department. Although the graffiti and notes began to become much less frequent into 2004 and 2005, they continued sporadically until the last occurrence in December, 2005.

Chrysler's reaction

For its part, Chrysler reacted, first by having May park in a fenced lot for management employees that was also monitored by security cameras. Supervisors in the plant did allow the initial incident of graffiti in August, 2002, to remain for two to three weeks before it was removed. After that, however, every instance of graffiti was removed within a few hours of discovery.

What changed was that, with the second incident of graffiti, plant HR personnel were made aware of the harassment and reinstilled Chrysler's no-tolerance policy with the line supervisors. As it became clear that the incidents were repeating, a protocol was set into place which included briefing of all production and maintenance supervisors in the plant's paint department. As soon as an incident of graffiti was discovered, the plant's personnel office (which is in a separate administration building) was to be notified so that a camera could be brought into the plant to photograph and record the incident. Immediately after photographing, the graffiti was to be removed or painted over. Then, the representative of personnel or line supervisor documenting the occurrence was to interview whoever discovered and reported the incident as well as any other employees in the vicinity at or near the time of discovery. All documentation was then provided to a designated individual in the personnel office, who became responsible as the repository of relevant information.

In September, 2002, when the first incident of a threatening note occurred, May had called local police without reporting the incident to plant personnel. However, because of the continuing and increasingly offensive nature of the incidents, local HR personnel, including the head of HR for the facility began to take extraordinary measures as well as reporting every incident to both the corporate Office of Diversity and Office of General Counsel in Auburn Hills, Michigan.

On a local level, in addition to documentation, the HR Manager personally met with all three shifts of maintenance personnel in the paint department, and advised them that if and when it was determined who was responsible, they would be terminated. Next, the corporate policy on workplace harassment was disseminated by mailing a copy to every employee of the plant with pay statements. This was in addition to annual training on workplace harassment and posting of the anti-harassment policy throughout the plant. All production and maintenance supervisors in the paint department were instructed to be on the watch for anything that might be of use in ending the harassment. The HR Manager also spoke with the assistant general counsel assigned to the matter and asked her consent to use a mole and to install cameras, at least in the so-called clean room, where May kept his personal tool box.

The Office of Diversity assigned a specialist to the matter and he was available to local personnel in order to discuss and advise on any questions. That individual actually came to the plant in December 2002 in order to meet with May and find out if there was anything May might be able to do to aid in the effort to stop the harassment. Interestingly, May was totally uncooperative, initially refusing to provide anything and explaining that it was Chrysler's job to stop the harassment, not his. (It was discovered after the fact that

May's suit had already been filed at the time of this meeting.) Finally, May did provide a list of 22 names of coworkers and supervisors he believed did not like him and, therefore, might be responsible.

The Office of General Counsel became very proactive, very quickly. It consulted with its Corporate Labor Relations Office and determined that the use of moles or cameras were not viable options. Both a forensic document examiner and a fingerprint expert were privately retained. The forensic document examiner immediately requested as many original examples of handwriting as could be found for all employees in paint department maintenance. Plant HR personnel complied, gathering log books from the floor of the plant, personnel files with original employment applications, even a partially completed crossword puzzle found in a restroom used by paint department maintenance personnel. Plant HR also provided all of the incident documentation it had for every note or incident of graffiti, including photographs with scales showing the size of lettering.

As early as April, 2003, the forensic document examiner had concluded two important things, both to a high degree of probability. First, that the author of the notes and the author of the graffiti was the same. Second, that a single individual had done all of the writing. With this knowledge, plant HR personnel were instructed to begin gathering "gate ring" records for certain incidents of graffiti or notes.

Although the Belvidere Assembly Plant is more than three million square feet in size, no one can go into or out of the plant without passing through one of several gates which are opened using a magnetically encoded card. Some instances of harassing behavior were found under circumstances where the time of placement could be narrowed. For example, graffiti on a tool box was not present on a Friday night when the plant shut down for the weekend and was present at 7:00 a.m. on Monday when the first shift showed-up. In that instance, there was relative certainty that the graffiti had been placed over the weekend, at a time when the plant was closed and only a small crew of maintenance personnel were present, on "plant patrol," in order to assure there were no issues with the physical facility, itself. Over a weekend there might be a total of as few as 18 people who accessed the plant.

Thus, by pulling gate rings and work scheduling records, it was possible to determine who was present and who did not have opportunity. Over time, a matrix was developed during which many employees were eliminated from suspicion because they were not present when one or more of the incidents of graffiti or a note were actually placed. In some cases, too, persons were eliminated from suspicion because they had retired, transferred to another facility, or were terminated, yet the harassment continued in their absence.

Over the time that the harassment continued, a period of almost four years, no useable fingerprints were found, the Belvidere police, working with the Illinois State Police Forensics Laboratory, developed no leads, Chrysler's private forensic document examiner was able to eliminate most of the employees in paint department maintenance as possible culprits, and no one was ever caught or identified by plant personnel.

At the end of 2005, Belvidere Assembly was closed for several weeks as it was refitted for a model changeover. It had been assembling the Neon automobile and, as of January 2, 2006, a new line of cars, the Dodge Caliber, Jeep Patriot and Jeep Compass, were assembled in that plant. After that shut-down and new product launch, there were no further instances of harassment directed at May.

The motion for summary judgment and trial

In 2006, a motion for summary judgment was filed and granted in part and denied in part. All claims of discrimination were dismissed with prejudice. All that remained for trial was a single issue defined by the district court:

While the court is by no means saying that the actions defendant took were not reasonably likely to prevent the harassment from recurring, the court cannot say as a matter of law that those actions were reasonably likely to do so and in fact, they did not do so. Plaintiff is entitled to have a jury decide this question.[2]

Unfortunately, after the motion for summary judgment was decided the case was delayed, first by the death of May's original counsel, then by Chrysler's well-publicized bankruptcy in 2009. Although there were settlement discussions, both in private mediation and with the aid of a magistrate judge and a district judge, the case could not be resolved prior to trial.

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Office
Illinois Bar Center
424 S. Second Street
Springfield, IL 62701
Phones: 217-525-1760 OR 800-252-8908
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In late August 2009, the case went to trial over seven days. In its simplest, plaintiff's attorneys focused the trial on what Chrysler could have done, but chose not to do, specifically focusing on its decision not to install surveillance cameras at least in the clean room. The plaintiff also painted the employees charged with stopping the harassment, mostly plant HR personnel, as being more interested in blaming May for the harassment than stopping it.

The defense chose a middle of the road tack, spending a great deal of time on what it did do and expressing frustration over the inability to identify the culprit, while also allowing its expert, the forensic document examiner, to testify that the only employee he had been unable to eliminate from suspicion was May, himself. A psychiatrist retained by Chrysler also testified that based on psychological testing and her clinical examination of May, she was of the opinion that he had a need for attention so great that he *could be* be responsible for the graffiti and notes.

Because there was a § 1981 claim, the judge allowed a punitive damages instruction to go to the jury. In closing, the plaintiff's attorney hammered the "they could have done more" theme, while the defense focused entirely on Chrysler's wanting to stop the graffiti and notes for its own benefit and because it institutionally believed that none of its employees should have to endure the heinous work environment that May had lived in for nearly four years.

The jury returned a verdict for the plaintiff and awarded $709,000 in compensatory damages and $3.5 million in punitive damages. A jury consultant retained by Chrysler spoke with a few of the jurors following their release by the district court. Apparently, the majority of jurors concluded, at the outset of the trial, that a company the size and with the resources of Chrysler could have stopped the harassment, had it really wanted to do so. One of the interviewed jurors made reference to forensic techniques seen on popular television shows such as CSI. The deliberations, which occurred over about five hours, were said to mostly focus on the amount of the award and whether to assess punitive damages. In one case, a juror expressed frustration that a company like Chrysler did not have a written anti-harassment policy. In fact, the written anti-harassment policy, which was referenced multiple times during trial, was Chrysler's Exhibit 1 and went back to the jury deliberation room.

Post-trial proceedings in the district court

Following the entry of the verdict as the judgment of the court, Chrysler filed alternative motions under Federal Rules of Civil Procedure 50 and 59 for judgment as a matter of law or, in the alternative, new trial or remittitur. Before ruling on Chrysler's motions, the district court issued an order requesting supplemental briefing regarding whether, by allowing evidence of alternative responses to harassment that Chrysler did not attempt such as installing surveillance cameras, the court had committed evidentiary error.

On July 7, 2011, the district court entered its order on the post-trial motions in a "Statement" that has not been released.[3] To begin, the district court found that evidence of alternative responses not taken by a defendant in a hostile work environment case are relevant and admissible where it cannot be concluded, as a matter of law, that "the steps taken by the employer 'clearly satisfied' its obligations under the law by taking steps intended to stop harassment, even where the harassment did not, in fact, end."[4] Looking to its own earlier opinion in the motion for summary judgment, the district court concluded that it had not been able, at the summary judgment stage, to conclude that Chrysler's response was reasonably likely to prevent the harassment from recurring.[5] Therefore, the jury was charged with determining whether Chrysler's response was reasonable under the circumstances as then existed, including consideration of "everything about defendant's response, including whether alternative measures should have been used to prevent the harassment."[6]

From here, the district court first reviewed "several favorable aspects to plaintiff's case" and denied Chrysler's motion for judgment as a matter of law, finding that there was sufficient basis in the evidence for the jury to find in favor of the plaintiff.[7] Next, the court tackled the compensatory damages, finding that there was no "rational connection between the award of $709,000 and the evidence."[8] Having found no rational connection, the court reviewed comparable cases to determine ranges of damages for emotional distress resulting from workplace harassment.[9] The compensatory damages award was then remitted to $300,000.[10] In a move reminiscent of King Solomon, the district court concluded that "[May] must either accept the award of $300,000 in compensatory damages or be given a new trial that would be limited to the issue of damages."[11] The procedural effect of this order was that the remittitur was not an appealable order and would not become an appealable order unless and until May elected a new trial and a new verdict and judgment were entered.

Finally, the district court addressed the $3.5 million punitive damages award. It noted at the outset that "[i]n this case, it is a close call whether defendant's response was reasonable or negligent."[12] With little discussion, the court found that although Chrysler's response to the harassment may have been "imperfect or somewhat lacking," there was no evidence to suggest that it rose to the level of callousness or reckless disregard for May's federally protected rights necessary to support punitive damages.[13] The punitive damages award was vacated.

In response to the order, rather than electing a new trial, plaintiff did nothing. On August 1, 2011, the court entered final judgment in favor of May in the amount of $300,000. It was from this order that May filed an appeal as to the court's order vacating the punitive damages award. Chrysler filed a cross-appeal asserting that its motion for judgment as a matter of law had been erroneously denied.

The appeal

For his part, May filed an appellate brief which strongly argued the facts and focused entirely on testimony of Chrysler employees and inconsistencies in and between their testimonies. Simply put, it was urged that the facts did demonstrate callous indifference by Chrysler to May's rights. On cross-appeal, Chrysler responded to May's arguments by demonstrating that the record was replete with examples of responses to the harassment, all intended to make it stop. This dovetailed with Chrysler's argument that the motion for judgment as a matter of law should have been granted by the district court. Relying on cases such as *Berry* and *Sutherland,* Chrysler argued that it had taken steps reasonably intended to stop the harassment so that it should not be liable because its efforts had been unsuccessful. The case was argued on April 13, 2012, with the panel seemingly focusing its questions on the factual inconsistencies in Chrysler's responses to the harassment, as urged by May's counsel.

On August 23, 2012, 10 years after May filed suit, the U.S. Court of Appeals for the Seventh Circuit released its opinion.[14] In an opinion with a dissent, the reviewing court

began with the sentence: "More than fifty times between 2002 and 2005, Otto May, Jr., a pipefitter at Chrysler's Belvedere [sic] Assembly Plant, was the target of racist, xenophobic, homophobic, and anti-Semitic graffiti that appeared in around the plant's paint department."[15] The court then went on for six pages of its opinion detailing almost every incident of graffiti and, sometimes sarcastically, marginalizing Chrysler's response. "Beyond cataloguing the actions it took in response to May's harassment, and somewhat at odds with the empathy expressed by some employees for May's predicament, Chrysler's defense had another (rather unsettling) theme: May did it all to himself."[16]

In its discussion of the law, the Court of Appeals majority first denied the cross-appeal, more-or-less adopting the reasoning of the district court.[17] Regarding punitive damages, however, the majority took the district court to task. First, the punitive damages award was reinstated in full. Next the appellate court found that the district judge had abused his discretion in ordering a new trial on damages because there had been ample evidence to support the jury's verdict in the first instance.[18] Then, although the district court had not ruled on whether the amount of the verdict was so excessive as to violate due process, the Court of Appeals found that it did not.[19] Of some solace to the trial court, the dissent read, "I would affirm the district court's judgment on both liability and punitive damages for the reasons stated in the district court's excellent opinion."[20]

Appellate counsel for Chrysler filed both a petition for rehearing and for rehearing *en banc*. The petition for rehearing *en banc* argued that the Court of Appeals had erred when it disallowed the district court's order conditionally granting a new trial and that the punitive damages verdict should be reduced. The petition for rehearing to the same panel argued that the decision regarding the constitutionality of the punitive damages award was inconsistent with prior opinions by other panels of the same circuit.

On January 9, 2013, the appellate court issued an order withdrawing its prior opinion and granting rehearing before the same panel. Re-argument occurred, perhaps fittingly, on April 1, 2013. Neither counsel for May nor Chrysler was asked any questions by the panel. An amended opinion was released on May 14, 2013.[21]

In a stunning (at least to the parties) reversal, the amended opinion was unanimous and completely adopted the reasoning of the district court. The factual recitation is substantively the same as in the court's original opinion.[22] As to liability (Chrysler's motion for judgment as a matter of law) the district court was affirmed with this portion of the amended opinion also remaining much the same as that of the original.[23] But on punitive damages, the per curiam opinion held, "[w]e don't disagree with the district judge's determination that the jury's punitive damages verdict was without a legally sufficient evidentiary basis."[24]

To be sure, Chrysler could have done more to stop the harassment. But given the situation that it faced—an anonymous harasser, an assembly plant covering four million square feet, and a three-shift-a-day operation, Chrysler's response was enough as a matter of law to avoid punitive damages liability.[25]

The release of this most recent opinion does not end this litigation, by any means. A petition for rehearing *en banc*, filed by May's counsel was denied by the Court of Appeals on July 10, 2013. Given the amount at stake it is a near certainty that when the Court of Appeals decision is final, the party most offended will file a petition for writ of certiorari with the Supreme Court of the United States.

Regardless of how and when this lawsuit finally resolves, it remains that the Clerk of the U.S. District Court for the Northern District of Illinois has anecdotally informed the district judge and the parties that the verdict entered by the jury of eight people in the courtroom in Rockford, Illinois, on September 2, 2009, stands as the largest award in a single-plaintiff employment discrimination case in any district court in Illinois.

Otto May continues to work as pipefitter in the maintenance department in the paint department of Chrysler's Belvidere Assembly Plant and in 2018, will be eligible for retirement with maximum benefits allowable under the collective bargaining agreement between Chrysler and the UAW. ■

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1. When May was hired, in 1988, the entity owning the plant was Chrysler Corporation. It later was purchased by Daimler Benz AG, and became DaimlerChrysler Corporation. A controlling interest was subsequently purchased by Cerberus Capital Management and the resulting entity was renamed Chrysler LLC. Chrysler LLC was liquidated in bankruptcy in 2009 and many of its assets and liabilities were purchased out of liquidation by a new owner, now called Chrysler Group LLC. Among the assets purchased was the Belvidere Assembly Plant. Chrysler Group LLC also assumed liability for all claims arising out of employment by the defunct entity, Chrysler LLC. For convenience, during the bankruptcy proceedings and liquidation, the two entities were named Old Carco LLC and New Carco LLC. For purposes of this note, the plant owner and operator will simply be referred to as "Chrysler."

2. *May v. DaimlerChrysler Corp.*, 2006 WL 6656531 *2 (N.D.Ill. Sept. 26, 2006) citing *Cerros v. Steel Technologies, Inc.*, 398 F.3d 944, 954 (7*th* Cir. 2005); *Williams v. Waste Management of Illinois, Inc.*, 361 F.3d 1021, 1031 (7*th* Cir. 2004).

3. *May v. Chrysler Group LLC*, 02 C 50440, Document # 219, filed 07/07/11.

4. Id. at p. 3, citing *Sutherland v. Wal-Mart Stores, Inc.*, 632 F.3d 990, 995 (7*th* Cir. 2011); *Berry v. Delta Airlines, Inc.*, 260 F.3d 803 (7*th* Cir. 2001).

5. *Id.*

6. *Id.*

7. *Id.* at pp. 4-5.

8. *Id.* at p. 6.

9. *Id.* at pp. 6-7 (There was no claim for actual damages as during the entire period May did not miss any work and his expenses related to therapy and treatment for social adjustment disorder were paid directly by Chrysler.).

10. *Id.* at p. 7.

11. *Id.* at p. 8.

12. *Id.* at p. 9.

13. *Id.*

14. *May v. Chrysler Group LLC*, 692 F.3d 734 (7*th* Cir. 2012).

15. *Id.* at 736.

16. *Id.* at 741 (emphasis in original).

17. *Id.* at 745.

18. *Id.* at 747.

19. *Id.* at 747-48.

20. *Id.* at 748.

21. *May v. Chrysler Group LLC*, 716 F.3d 963 (7*th* Cir. 2013)

22. *Id.*, at 964-71.

23. *Id.* at 971-74.

24. *Id.* at 974.

25. *Id.* at 975-76. (As an aside, at the time of the events giving rise to this litigation, Belvidere Assembly was only operating two shifts per day but has now been refitted and is assembling the Jeep Patriot, Jeep Compass and new Dodge Dart automobiles).

OSHA clarifies regulations: Third parties may act as the employees' "walkaround representative" during OSHA inspections

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phasized that the Racic letter "merely state[d] that a non-employee who file[d] a complaint does not necessarily have a right to participate in an inspection . . . [i]t d[id] not address the right of workers at the facility without a collective bargaining agreement to have a representative of their own choosing participate in the inspection."[2] OSHA concluded that any interpretation prohibiting such a right is inconsistent with the OSH Act and OSHA regulations. As a result of the confusion created, OSHA withdrew the Racic letter.

Section 657(e) of the Occupational Safety and Health Act ("OSH Act") prescribes that employees have a right, subject to the Secretary of Labor's ("Secretary") regulations, to have a representative of their choosing accompany the OSHA compliance officer ("CSHO") during a workplace inspection.

OSHA highlighted the Secretary's regulations, 29 C.F.R. § 1903.8, which qualify the walkaround right. Generally, the Secretary or the CSHO conducting the inspection determines who can participate in an inspection. See 29 C.F.R. § 1903.8(a)-(d). Specifically, 29 C.F.R. 1903.8(c) expressly permits a third party who is not an employee of the employer to accompany the walkaround when the CSHO determines that the third party is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace.

OSHA indicated that the regulations acknowledge that most employee representatives would be employees of the employer, but expressed a clear understanding that the regulations permitted third-party representatives, especially in situations where third parties would allow for a more effective inspection. OSHA noted that an employee representative who is neither an employee nor a collective bargaining agent could make important contributions such as: providing experience and skill obtained from evaluating similar working conditions in other plants, eliminating language barriers where non-English speaking workers want a representative who is fluent in both their language and English, and where worker feel uncomfortable talking to the CSHO without the presence of a representative of their choosing. ■

1. Letter to Mr. Steve Sallman, www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=28604.
2. Id.

Please check your guns at the door: Employer rights under the Illinois Firearm Concealed Carry Act

By Richard A. Russo, Davis & Campbell L.L.C., Peoria, IL

On July 9, 2013, the Illinois General Assembly approved Public Act 98-0063, overriding Governor Quinn's veto, and enacting the Firearm Concealed Carry Act ("Act"). In passing the Act, the State of Illinois became the 50th state to enact legislation authorizing the concealed carrying of firearms. The Act went to effect immediately, but provides the State Police with a period of 180 days before concealed carry license applications must be made available.

The impetus for the passage of the Act was the Seventh Circuit Court of Appeals' December 11, 2012 decision in the case of *Moore v. Madigan,*[1] in which the Court of Appeals found Illinois' concealed carry ban unconstitutional. In doing so, the Court of Appeals provided the Illinois legislature with 180 days "to craft a new gun law that will impose reasonable limitations, consistent with the public safety and the Second Amendment as interpreted in this opinion, on the carrying of guns in public."[2]

Authorization to Carry a Concealed Firearm

The Act authorizes a concealed carry license holder to "carry a loaded or unloaded concealed firearm, fully concealed or partially concealed, on or about his or her person" and to "keep or carry a loaded or unloaded concealed firearm on or about his or her person within a vehicle."

Under the Act, a "concealed firearm" means "a loaded or unloaded handgun carried on or about a person completely or mostly concealed from the view of the public or on or about a person within a vehicle." A "handgun" is defined by the Act as "any device which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas, or escape of gas that is designed to be held and fired by the use of a single hand."

In order to obtain a concealed carry license, an individual must: (1) be at least 21 years old; (2) have a currently valid Firearm Owner's Identification Card ("FOID Card") and currently meet the requirements for the issuance of a FOID Card; (3) have not been convicted or found guilty of a misdemeanor involving physical force of violence or two or more DUI/DWI violations within the preceding five years; (4) not be subject to a pending arrest warrant or disqualifying criminal proceeding; (5) not have been in a residential or court-ordered treatment for alcohol/drugs within the preceding five years; and (6) complete 16 hours of required firearm training and education.

Statutorily Prohibited Areas

The Act contains a number of specified locations where a concealed carry license holder is prohibited from carrying a firearm. This list of prohibited areas includes any building/property under the control of a:

- Pre-school, daycare, elementary school, secondary school, college or university;
- The federal, state or local government or

the courts;
- Hospital, mental health facility or nursing home;
- Establishments where more than 50% of the establishment's gross receipts are from the sale of alcohol;
- Public playground, park, or athletic area/ facility;
- Licensed gaming facility;
- Professional sports stadium/arena;
- Airport; and
- Amusement park, zoo or museum

Employer Rights Under the Act

In the tradition of the Old West, the Act does allow for employers to require its employees and visitors to "please check their guns at the door" so to speak.

Specifically, the Act allows employers to prohibit the carrying of firearms on their private property as long as the employer clearly and conspicuously posts 4 x 6 inch signs, approved by the State Police, at the entrance of the property/building stating that firearms are prohibited on the property. Employers that own or operate property included on the list of prohibited areas must also post the State Police approved sign regarding the prohibition.

For any employer that wants to prohibit firearms on its property, in addition to signage, it would be prudent to have a written weapons policy restricting employees and visitors from carrying firearms in the workplace.

However, there is a parking lot exception to an employer's ability to prohibit firearms on its property, applicable to all employers, including those included on the list of prohibited areas. The Act restricts an employer from prohibiting concealed carry license holders from being able to carry their concealed firearm on their person within a vehicle onto the employer's parking lot and being able to store their firearm in the vehicle while parked in the employer's parking lot. The Act also allows the concealed carry license holder the ability to carry the concealed firearm in the immediate area surrounding his/her vehicle in the parking lot for the limited purpose of storing or retrieving the firearm within the vehicle's trunk.

Bottom Line

The Act provides those employers not included on the list of prohibited areas with the flexibility to determine whether or not they wish to permit employees and visitors with concealed carry licenses to carry concealed firearms in the workplace. Whatever decision the employer makes, it is prudent that the employer implements a weapons policy and clearly communicates the policy to its employees and visitors. For those employers that want its employees to "please check their guns at the door,' or must do so as an employer on the list of prohibited areas, in addition to implementing and communicating a weapons policy, the employers must post signage in compliance with the Act. ■

1. 702 F.3d 933 (7th Cir. 2012).
2. *Id.* at 942.

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Tuesday, 9/10/13 – Webinar—Intro to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 10:00 – 11:00 a.m. CST.

Wednesday, 9/11/13- Chicago, ISBA Chicago Regional Office—2013 Cyberlaw Symposium. Presented by the ISBA Intellectual Property Section. 8:45-5.

Wednesday, 9/11/13- Live Webcast—2013 Cyberlaw Symposium. Presented by the ISBA Intellectual Property Section. 8:45-5.

Thursday, 9/12/13 – Webinar—Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 10:00 – 11:00 a.m. CST.

Thursday, 9/12/13- Teleseminar—UCC 9: Fixtures, Liens, Foreclosures and Remedies. Presented by the Illinois State Bar Association. 12-1.

Thursday, 9/12/13- Chicago, ISBA Regional Office—Trial Practice Series: The Trial of a Retaliation Case. Presented by the ISBA Labor and Employment Section. 8:55-4:15.

Thursday, 9/12/13- Live Webcast—Trial Practice Series: The Trial of a Retaliation Case. Presented by the ISBA Labor and Employment Section. 8:55-4:15.

Monday, 9/16-Friday, 9/20/13 - Chicago, ISBA Regional Office—40 Hour Mediation/Arbitration Training. Presented by the Illinois State Bar Association. 8:30-5:45 daily.

Tuesday, 9/17/13- Springfield, INB Conference Center—Fracking in Illinois- Facts and Myths Explained. Presented by the ISBA Environmental Law Section; co-sponsored by the ISBA Real Estate Law Section, the ISBA General Practice, Solo & Small Firm Section, and the ISBA Agricultural Law Section. 8:30-5:00.

Tuesday, 9/17/13- Teleseminar—Transactions Among Partners/ LLC Members and Partnerships/LLCs- Major Tax Traps for the Unwary. Presented by the Illinois State Bar Association. 12-1. ■

Labor & Employment Law

Illinois Bar Center
Springfield, Illinois 62701-1779

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