

## HYPOTHETICAL #1

Alice is a clerk in the Wonderville police department. She believes she has been sexually harassed by a co-worker, Oz Tinman. She complained to her immediate supervisor, who moved the offending employee's desk into the records room – which is generally recognized as the place where employees “in trouble” are sent. Tinman is none too happy about his new location, and has been telling his workplace friends that Alice is a “bitch,” and to stay away from her because “she's trouble.” He also complains that Alice was only hired because of “preferences” under the department's affirmative action plan. Alice has been vocal as well, telling friends that Oz is a “pervert,” and a “sex offender” and that the employer “uses and abuses” its female workers. Alice has also applied for a promotion, but she scored poorly on the recent test, and the promotion went to another woman instead. In the past, she has seen one of the members of the rating panel eating lunch with Oz and his crowd.

Wonderville has civil service rules prohibiting sexual harassment and retaliation, and permitting those who take exams to protest the results. The civil service commission has the power to order remedial measures, and to cancel the results of an exam. Both Alice and Tinman are in the bargaining unit represented by a labor union, CWACU (Clerical Workers Are Critical And Underpaid). The MOU (collective bargaining agreement) prohibits sexual harassment and retaliation by the employer, and states that the employer may not retaliate based upon speech. Generally, the MOU does not address the subject of promotional exams, but nothing in the MOU limits the scope of the general “non-discrimination” clause.

In what forum can Alice pursue remedies against Wonderville and Oz? How *should* Alice seek redress? How should Wonderville respond if Alice files complaints with the civil service commission, a union grievance, and a lawsuit simultaneously? How should the union address Alice's grievance in view of the fact that Tinman is on the union's negotiating committee? How should the union react to Alice's demand the the civil service commission redo the promotional exam?

A female manager in Wonderville's police eeo unit investigates the whole mess, and recommends that Tinman be suspended for ten days, five for the initial incident and five for alleged retaliation based on his comments to his friends. Tinman believes he has been slandered by Alice, singled out for harsher treatment because he is male and over 50, and that his speech regarding the affirmative action plan was protected by the first amendment and proposition 209.

What remedies can Tinman pursue against Wonderville and Alice? How should Wonderville respond?

## **HYPOTHETICAL #2**

The MOU between the transit union and Wonderville states, in general terms, that employees' privacy "will be respected." The MOU authorizes drug testing of transit supervisors and applicants for supervisor positions. Some supervisors are in the field; others are permanently stationed at central headquarters. The employer's rules prohibit drug use and possession in the workplace or maintaining drugs on the employer's premises. The regulations state expressly that desks and lockers are "subject to search." The rules were in place both before and after the MOU was negotiated. In addition, DOT regulations require drug testing for the supervisors in the field. However, the drug testing provision is new for employees stationed at headquarters.

Jake has been a supervisor at headquarters for five years. Prior to being moved to headquarters, he suffered from severe stress, and he is now on medication for manic depression. He objects to the new MOU provision. Can he challenge it in court?

Jake was moved to headquarters as an disability accomodation. Positions at headquarters are desirable, and the MOU provides that supervisors must annually "bid" for positions. Jake lacks the seniority to retain his position at headquarters. In the absence of language in the MOU addressing this issue, does the ADA override the MOU's bidding procedures?

Because of his illness, Jake often seems spacey. In fact, his coworkers have taken to calling him "bubbles" – not knowing of his disability. One day Jake tips over in his chair, and the managers concludes that he is high. He sends Jake for drug testing, and wants to search him and his desk for drugs. Can he? Where should Jake seek relief?

## **HYPOTHETICAL #3**

At the union's request, Wonderville agrees to place certain probation officers on 12 hour shifts. They would like to agree that the employees would rotate 3 shifts in weeks 1 and 2, and 4 shifts in the third week (36, 36, 48hrs respectively), to avoid overtime. Can the union and Wonderville reach this agreement? How?