

# the NEWS

THE HVACR CONTRACTOR'S WEEKLY NEWSMAGAZINE SINCE 1926

MAY 14, 2007

VISIT US ONLINE AT [WWW.ACHRNEWS.COM](http://WWW.ACHRNEWS.COM)A **bnp** PUBLICATION

## Handling Discrimination in the Workplace

By John R. Hall  
Of The NEWS Staff

**S**AN ANTONIO — How much leverage do employers have when deciding whether an employee stays or goes? What kind of rules apply to hiring and firing employees and do these rules tend to handcuff the employers?

Those were a couple of questions that were part of a presentation by Ray Bissmeyer, an attorney with the San Antonio firm of Cox Smith Matthews Inc. Bissmeyer was addressing attendees to the Air Conditioning Contractors Association (ACCA) of Texas/Associated Plumbing-Heating-Cooling-Contractors (APHCC) Texas Annual Conference & Tradeshow.

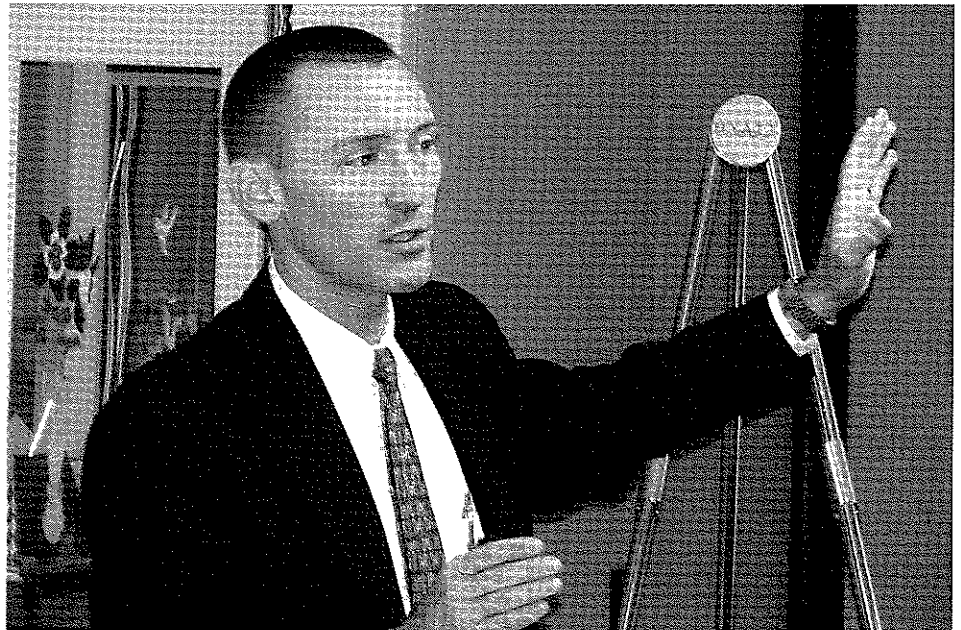
He began his presentation with a written statement, "Employment can be terminated for good reason, bad reason, or no reason at all, as long as it is not an unlawful reason."

He followed up by adding, "This isn't how it works in the real world. Try finding a jury that will find in your favor if you fire an employee for your own poor reasons."

Bissmeyer advised contractors to be careful of any oral or written statements they make during the interview or hiring process, noting that even something as simple as a greeting card with a humorous message can send the wrong message to a new hire, possibly even a discriminatory message.

He said employers should familiarize themselves with legislation, which specifically protects the right of employees, including:

- Title VII of the Civil Rights Act of 1964;
- Age Discrimination in Employment Act;



Attorney Ray Bissmeyer told a crowded seminar session in San Antonio that employees have many rights that contractors may not be aware of.

- Americans with Disabilities Act;
- Family and Medical Leave Act.

### DIRECT AND INDIRECT EVIDENCE

Bissmeyer noted that employees are often discriminated against by means of direct or indirect evidence. He cited two examples of direct evidence. "Harry tells Sally he will not hire her as a programmer because that is not a woman's job or Juan applies for a sales position and is told that the only entry-level positions for Hispanics are in housekeeping."

He said an example of indirect evidence is "circumstantial evidence that leads a person to conclude that adverse action was taken for an illegal purpose. For example, Jane has worked as an accounting clerk for three years with good performance. She applies for the accounting supervisor posi-

tion but is told that no positions are available. The next week, her employer hires a male accounting supervisor.

"You have to look at all of the facts. In this case, there may or may not be enough indirect evidence that Jane was discriminated against."

Bissmeyer cited a number of different court cases exemplifying different types of discrimination that lead to an employee lawsuit. In one example, there was a history of an abusive work environment where employment was based on sexual favors.

In a second example, an employer made work conditions so intolerable that the employee had no choice but to leave. In the third example, an employer had a written harassment policy but the employer failed to follow up on the policy.

He said that something as subtle as an

employee's 50<sup>th</sup> birthday party, where co-workers tease the person with funny cards and black balloons, can be construed as age discrimination.

## THE DANGERS OF SEXUAL HARASSMENT

Bissmeyer said that the number of sexual harassment cases in the workplace has risen dramatically between 1996 and 2005. During that time period, the number of sexual harassment cases were more than the entire total wrongful discharge cases each year. He said, "The Equal Employment Opportunity Commission (EEOC) tends to find cause for judgments

more often in sexual harassment cases."

The EEOC defines sexual harassment as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature." Bissmeyer wanted contractors to test their knowledge of sexual harassment by asking them what they would do if the following happened:

"You are Susan's supervisor. She comes to you and confidentially suggests that a co-employee is bothering her in a sexually suggestive manner. You offer to investigate the matter. She firmly rejects the offer and states that she merely wanted you to be aware of the situation in case it became worse. What should you do next?"

Bissmeyer explained that employers should investigate this matter regardless of what the employee says. "She could say you never took action and this could come back to bite you later," he said.

One other thing he noted during his seminar — contractors need to make sure they have written policies about discrimination in an updated employee handbook. "But a bad handbook is worse than no handbook at all," cautioned Bissmeyer.

And if an employee is fired or quits, Bissmeyer suggests an immediate exit interview in order to document all of the reasons the employee left. "Act quickly and don't let too much time pass," he said. ■

Reprinted from

Air Conditioning | Heating | Refrigeration

the **NEWS**

Copyright 2007