The McCroskey Advisor

Published for the clients and friends of the law firm of McCroskey, Feldman, Cochrane, & Brock, P.C.

Serving the injured and the worker since

Volume 6, Number 1 May 1998

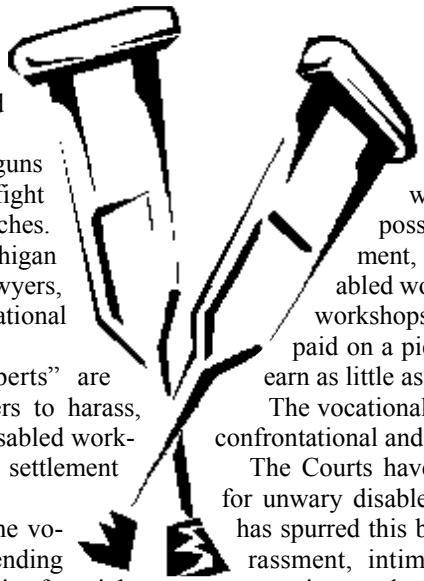
Workers comp update: insurance war drags on

by J. Walter Brock

Things have recently been fairly quiet on the front lines of the Workers' Compensation war. It is pretty much trench warfare at this point.

Under Governor Engler, it has been impossible to pass any legislation to improve the workers' compensation climate, although Governor Engler is unwilling to make further moves to gut workers' rights because he is getting close to another election.

Of course, the Governor's henchmen on the Workers' Compensation Appellate Commission have continued their dirty work, trying to judicially gut workers' rights. Their attempts have been rebuffed by the Michigan Supreme Court, in large part. Thus, things remain quiet on the legislative and judicial fronts.



Even though the big guns are silent, however, the fight goes on in the muddy trenches. Disabled workers in Michigan are now, through their lawyers, slugging it out with vocational experts.

These so-called "experts" are hired by insurance carriers to harass, intimidate, and demean disabled workers in an attempt to force settlement of their claims.

The battle tactics of the vocational experts include sending disabled workers to far cities for a job interview, forcing disabled workers to contact large numbers of employers even where there is no possibility of employment, and sending disabled workers to sheltered workshops where they are paid on a piece rate basis and earn as little as $10 per week.

The vocational experts are often confrontational and disagreeable.

The Courts have provided a trap for unwary disabled workers which has spurred this battle tactic of harassment, intimidation, and demeaning work. The Courts have said that if a disabled worker does not cooperate with a vocational expert, all benefits are forfeited.

This is a very serious penalty, and attorneys for injured workers are very reluctant to advise clients to refuse to cooperate with these ugly tactics.

Please remember to stay in close contact with your attorney if vocational rehabilitation is attempted. There are a few vocational experts who are helpful, but they are few and far between.

Do not refuse to seek out employment, or refuse to send out resumes or attend interviews.

You should request training where appropriate. Most insurance carriers

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Engler's policies are killing Michigan's lakes and

At one time Michigan was considered a national leader in water quality and pollution control. From the 1960s through the early 1980s, impressive progress was made in cleaning up Michigan's polluted waterways. The Great Lakes, as well as Michigan's many inland lakes, were cleaner than they had been in decades.

No longer. Michigan's waters have been steadily deteriorating for years, endangering all the gains we have made in recent decades.

Why are we losing ground? Dr. Howard Tanner, Director of the Michigan Department of Natural Resources from 1975 to 1983, is unequivocal.

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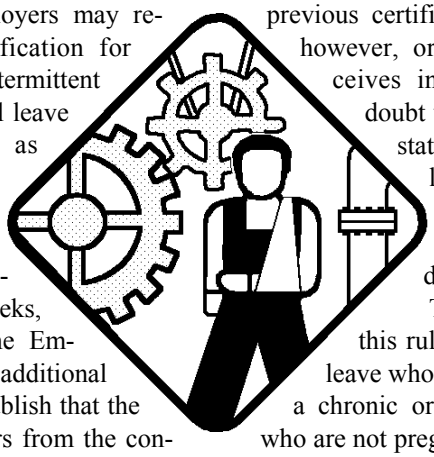
Employer can request FMLA recertification every 30 days

by Thomas Cochrane

Employees taking leave under the Family and Medical Leave Act are often required by their employer to submit medical certification forms filled out by their doctor. Employers may require medical certification for employees taking intermittent leave (i.e. occasional leave for brief periods) as well.



If an employee submits a certification for a health condition lasting for weeks, months or more, the Employer may request additional certifications, to establish that the employee still suffers from the condition.

Employees and unions have often called McCroskey Law Offices asking how often an Employer may request recertification.

Regulations issued by the Department of Labor explain that recertification can be requested by an employer no more often than every 30 days.

If circumstances described in the previous certification have changed, however, or if the employer receives information that casts doubt upon the employee's stated reason for taking leave, the employer may request certification in less than 30 days.

The only exception to this rule is for employees on leave who are not suffering from a chronic or long-term condition, who are not pregnant, and who are not taking intermittent or reduced schedule leave.

In such cases, if the minimum duration of the incapacity specified on the previous certification is more than 30 days, the employer may not request recertification until that minimum time has passed. The employer may request certification sooner if the employee requests an extension of leave, if the employee's medical condition has changed, or if the employer has reason to suspect the initial certification was not valid.

Once the employer requests recertification, the employee must provide the necessary documents within the time frame requested by the employer, or 15 calender days, whichever is longer, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good-faith efforts.

The employee bears the cost of the recertification.

Attorney Thomas B. Cochrane practices employment law, labor relations and workers compensation.

Engler's policies are killing Michigan's lakes and rivers

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Writing in the December, 1997, *Michigan Out-of-Doors* magazine, he says we have elected and re-elected a governor who has skillfully and deliberately weakened and dispersed authority for protecting the values that constitute our heritage.

Throughout Engler's administration, says Tanner, the governor has methodically dismantled mechanisms for oversight and public input on environmental issues. He gutted the DNR and took over the process of appointing its director. Then he created the Department of Environmental Quality, also headed by his appointee. Engler issued executive orders to abolish various commissions and boards, effectively destroying all means for the public to review the programs and offer input.

Engler removed DNR's power to enforce environmental laws. Some enforcement power was given to the DEQ, but the agency is unfunded and understaffed. Consequently, enforcement of laws protecting the environment has all but stopped.

Tanner points out that even as Engler dismantled environmental enforcement, he engineered the relaxation of oil and gas development rules, resulting in more than 5,000 new gas wells in northern Lower Michigan. These wells have been drilled, says Tanner, with few of the safeguards and rules to minimize their impact on our landscape and waterways.

Tanner urges Michigan voters to elect officials committed to improving our environment.

Tanner continues to speak out about the Engler administration. In an April 20 press conference, he plainly stated his position on the upcoming election.

"I consider myself born and raised as a Republican, but I see no place for me (and my beliefs) in the Engler administration," Tanner said.

Laws in Michigan should empower all consumers

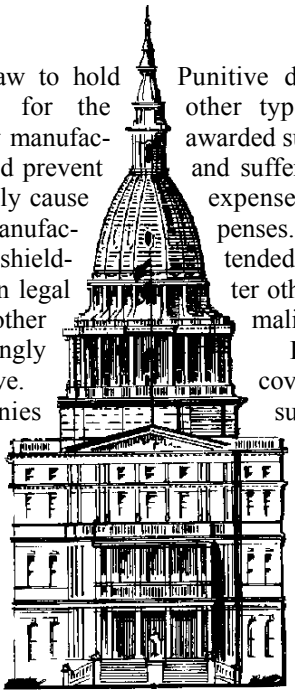
by Rep. Mark Schauer

The economic sphere of our society consists of agriculture, business, finance, government, labor, and consumers. Each of these institutions has an important role in building prosperity. Moreover, they frequently intersect each other.

For instance, strong consumer protection laws not only discourage companies from producing defective products, but also encourage conditions in which businesses *increase* their market share and profitability by producing products which are safe and reliable for consumers. High consumer protection standards make us more competitive in global trade because our economic institutions must respond to the overall demand for the best products available.

That is why I was proud to vote recently with my House colleagues in favor of a series of bills which give consumers the tools to protect themselves. These bills are:

HB 5371, which amends Michigan's product liability law to hold corporations responsible for the safety of the products they manufacture. The legislation would prevent companies which knowingly cause a defective product to be manufactured or distributed, from shielding themselves with certain legal protections available to other businesses which unknowingly produce something defective.



Specifically, companies which knowingly manufacture defective products or materials will not be allowed to hide behind liability laws established in 1996, which significantly weakened the power of consumers. Those laws included: caps on monetary damages ($280,000 for non-economic damages and $500,000 for death and or permanent loss of a vital bodily function); statutory reforms which removed discretionary power over lawsuits from judges and juries; and presumptions that products are safe if they meet bare minimum government standards.

Many of those "minimum standards" are already low and often decades old (i.e. safety standards for tires are 26 years old). Consumers who have been injured should not have their cases dismissed on legal technicalities. The bill would provide justice for consumers.

HB 5373, which would allow a judge or jury to award punitive damages against the manufacturer of an unsafe product if the action of the manufacturer is intentional, malicious, fraudulent, or done with a conscious and deliberate disregard of the interests of others. Punitive damages are in addition to other types of damages which are awarded such as compensation for pain and suffering for lost wages, medical expenses, and out-of-pocket expenses. Punitive damages are intended to punish offenders and deter others from engaging in acts of malice

HB 4048, would not bar recovery for damages of a consumer's cause of action in a pharmaceutical product liability action until *three years* after: (1) the time the consumer knows of the injury, and (2) the time the consumer knows the product actually caused the injury. This bill strengthens the rights of consumers because we know it can take several years for the negative effects of a drug to appear.

The legislation also closes a loophole in the law which allows pharmaceutical companies which knowingly market unsafe drugs to escape liability as long as the product was approved by the United States Food and Drug Administration (FDA).

Clearly, the promotion of safe products is good for the economic health of our state. All of society wins when we create and enforce strong consumer protection laws.

Mark Schauer is the state representative for the 62nd District, which includes Battle Creek. Rep. Schauer can be reached at (888) 962-MARK. His address is Room 318, Roosevelt Bldg., State Capitol, Lansing, MI 48913. E-mail: schauer@house.state.mi.us

Dan Bonner announces run for District Judge

We are pleased to hear that our old friend Dan Bonner has announced that he will be a candidate for District Court Judge in Muskegon. Dan has been a moving force in this community for years. He has been president of the local bar association, a college instructor, a drug prevention coordinator, and has served as a member of the board of almost every organization in Muskegon devoted to serving individuals.

Dan is a good man, a dedicated father, and a man who has served his God, his community, and his profession admirably.

- J. Walter Brock

Don’t get pushed around because of workers comp

by Ryan Klootwyk

When I crushed my left wrist on October 1, 1991, I joined the group of workers who are permanently, partially disabled. This group is vaguely defined under Michigan’s workers compensation laws.

I was termed a “light duty employee,” under the findings of the insurance company and my treating physician, which meant I could not do my former job.

I had no education, so my job prospects were extremely limited, so I decided to become a full-time college student.

To my amazement, I discovered the insurance company could force me to get a job to lighten its financial obligation to me.

The company had a vocational rehab vendor find me a security guard job for a wage lower than anything I had worked for in 10 years. The company said I must take the job or my compensation benefits would be cut. I told the insurance company and my new employer that I would take the job except for one, six-hour period that I had to be home to watch my two little boys while my wife worked.

That was reason enough for the company to stop paying my comp benefits which we had arranged in a Voluntary Pay Agreement just two years earlier after I was forced into bankruptcy.

Know your rights! Workers’ Compensation laws work well for the insurance companies. Worker rights are not as strong as one might think. I never thought I would become a permanently partially disabled worker. That happened to others. If it ever happens to you, or if it already has, don’t be caught in a vague situation. Consult your attorney prior to making *any* moves. That’s was the insurance companies do.

Ryan Klootwyk redeemed his workers compensation case in 1997. He was represented by attorney James Haadsma of the McCroskey law firm’s Battle Creek office.

Employers need permission from employees to call doctors for FMLA

by Thomas B. Cochrane

The Family and Medical Leave Act gives employees 12 weeks of unpaid leave each year if they suffer from a serious health condition, or if they are needed to care for a parent, spouse, or child with a serious health condition.

An employee requesting leave may be required to provide the employer with medical certification, a detailed statement from a doctor or health care provider explaining the nature of the serious health condition.

Employers frequently try to contact the health care providers to question them about the certification. A medical certification form can take several minutes to fill out, and doctors often make mistakes or fail to provide necessary information. Frequently, however, employers try to contact the health care providers to pressure them into changing their answers, or to ask questions about issues not covered on the form.

This practice is illegal. If an employee submits a certification form, the employer may not request additional information from the health care provider. The employer can have another health care provider contact the employee’s health care provider to clarify the contents of a certification, but *the employer must have the employee’s permission to do so*.

When union officials call me with questions about this process, I usually advise them to tell the employee to give their employer’s health care provider permission to contact the employee’s provider, but only in writing.

I do not favor allowing an employer’s provider to communicate orally, such as over the telephone.

If communication takes place orally, there is no record of what is said. This can lead to confusion and disputes over the validity of the certification.

Attorney Thomas B. Cochrane practices employment law, labor relations and workers compensation.

Unions can get info from employers for grievances

by Darryl R. Cochrane and Thomas B. Cochrane

A union frequently needs to gather information from an employer in order to process a grievance or carry a grievance to arbitration. Under the National Labor Relations Act, an employer is required to bargain in good faith with the employees' representative. Courts have ruled that the duty of good faith bargaining obliges the employer to provide unions with relevant information during the grievance process.

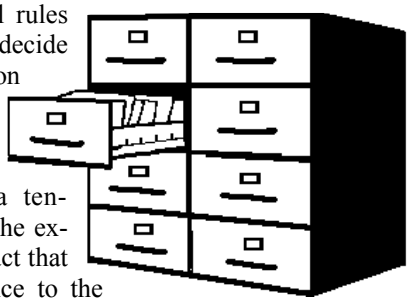
This can be a very important part of processing a grievance.

If an employer refuses to comply with a request for information, the union can file charges with the National Labor Relations Board, which has the authority to force an employer to provide the information. A union should not rely on an arbitrator to compel the release of information because the arbitrator lacks such authority.

The law provides that the employer must supply the union with relevant information.

When considering what is relevant, first try to identify the issue or issues involved in the grievance or arbitration.

When you have the issues firmly in mind, apply the following test adapted from the federal rules of evidence to decide if the information is relevant: Relevant evidence is evidence having a tendency to make the existence of any fact that is of consequence to the determination of the grievance or arbitration more probable than it would be without the evidence.



The courts have ruled that the standard for determining relevancy is to be construed liberally. This means that all doubts about relevancy must be resolved in favor of the evidence being relevant. According to the U.S. Supreme Court, there need only be a "probability that the desired information is relevant... and that it would be of use to the union in carrying out its statutory duties and responsibilities."

In the case of information pertaining to terms and conditions of employment, the courts and the National Labor Relations Board have held that the union does not have to prove the requested information is relevant, rather, the employer must prove the information is not relevant. The reason for this rule, according to the NLRB, is that such information is "so intrinsic to the core of the employer-employee relationship" the information is presumptively relevant. In such cases the employer has the burden of showing the lack of relevance, or it must justify in some other way its refusal to provide the information.

A union should always give thought to information it would like to have from the Company as it processes a grievance. If you think some particular information would be helpful, you should request it. Virtually all information is obtainable.

There is only one exception to the rule that a union may obtain all relevant information. Since 1978 the NLRB has held that a union is not entitled to "witness statements." In a later case involving a telephone employee improperly giving out an unlisted number, however, the NLRB required the employer to provide the union with "(the) security department's report and (the) first page of (a) computer record concerning (the) investigation of (the customer's) complaint." This later case teaches us that the NLRB is going to interpret "witness statements" narrowly, so it may be possible to obtain witness information under some circumstances.

The final word on this subject is: *ask and you shall receive.*

Attorney Darryl R. Cochrane specializes in labor relations, workers compensation, and employment law.

Attorney Thomas B. Cochrane practices employment law, labor relations and workers compensation.

Unions have a right to info for ADA purposes

An employer generally must keep medical information confidential under the Americans with Disabilities Act. According to the Equal Employment Opportunity Commission, however, an employer may reveal whatever medical information is necessary to enable the employer and union to jointly attempt accommodation of a worker with a disability. The EEOC announced this view in a policy letter released last year (*Letter Re: Confidentiality and Unions.* (EEOC 1997)). When the ADA accommodation involves a variance to or interpretation of an applicable collective bargaining agreement, unions must have access to all relevant information.

Workers comp war drags on

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hate to shell out money for anything, except confrontational vocational experts.

The insurance companies despise sending someone to school where they can learn a new trade. But if pushed by a Court they may have to do so.

We have talked about this problem before in these pages, but it seems that, more and more, this becomes the defining issue in workers' compensation matters.

Be careful out there. Talk to us before you act or react.

Attorney J. Walter Brock specializes in workers' compensation, asbestos litigation, social security, personal injury, and machine injury accidents.

Anti-labor lobbyist targets the Teamsters

In September, 1997, the *Advisor* reported that U.S. Representative Pete Hoekstra (R-Holland) is leading a Congressional study of organized labor.

Democratic Congresspeople have charged that Hoekstra is trying to use the investigation to intimidate organized labor.

The Teamster magazine now reports that Hoekstra's subcommittee has hired lobbyist Joseph diGenova to investigate the Teamsters union.

DiGenova, says *The Teamster*, is far from non-biased. As a lobbyist he represents the American Hospital Association, a management group which often locks horns with the Teamsters.

The American Hospital Association, the American Trucking Association, United Parcel Service, and other corporate interests have contributed more than a quarter-million dollars to Republican members of Hoekstra's subcommittee.

"Hoekstra and other members of his subcommittee have worked closely with House Speaker Newt Gingrich to try to take away overtime pay for overtime work, let management choose workers' representatives, and gut job safety rights under the Occupational Safety and Health Act," says *The Teamster*.

DiGenova and his wife will each be paid $25,000 per month for 20 hours of work per week.

Anyone wishing to contact Rep. Hoekstra can do so at the following address: Rep. Pete Hoekstra, 1122 Longworth House Office Bldg., Washington, DC 20515, (202) 225-4401.

The Teamster *is the official publication of the International Brotherhood of Teamsters, 25 Louisiana Ave., NW, Wanshington, DC 20001-2198.*

For more information...

If you would like more information about anything in this newsletter, or if you have a question about any legal problem, call the law offices of McCroskey, Feldman, Cochrane, and Brock, P.C., for a free consultation.

The McCroskey law firm specializes in many kinds of law, including:

- automobile accidents
- serious personal injury
- workers' compensation
- social security
- employment law
- labor relations
- defective products
- environmental law

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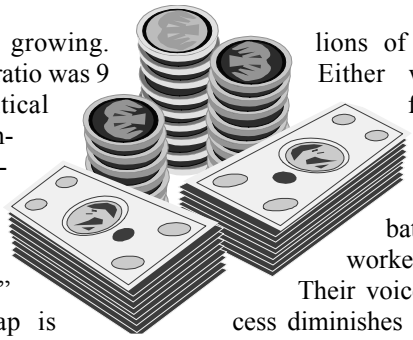
Additional copies of this newsletter may be obtained free of charge by contacting the McCroskey law firm.

Corporate election money drowns out union voices

In politics, money is power. And when it comes to state and national elections, the political balance of power is heavily tilted in favor of corporations. In the 1996 election, corporate interests spent more than $677 million on political contributions -- 11 times more than unions spent. While unions contributed less than 4 percent of the $1.6 billion raised by candidates and parties in 1996, corporations contributed more than 40 percent.

The disparity between corporate and union spending is growing. Since 1992, when the ratio was 9 to 1, corporate political contributions have increased by $229.8 million, while union contributions rose by only $12.1 million.



In "soft money" contributions, the gap is even wider. While both corporations and unions have increased their unrestricted so-called "soft money" contributions since 1992, corporate spending grew twice as fast. In 1996, corporations spent more than $176 million -- 19 times more than unions.

Corporate special interests are pushing initiatives that would skew the balance even further. By backing special restrictions on unions while imposing no such limits on themselves, big corporations are trying to remove working families and their unions from the political playing field. Corporations and anti-union lobbying groups are raising hundreds of millions of dollars to strip unions of their right to make financial contributions to candidates and causes of their choice.

At a recent meeting of the Republican Governors Association, proponents of the initiatives noted that this ploy has two strategic benefits: if it works, unions will lose their voice in politics. If it doesn't, unions will be forced to spend millions of dollars in the fight. Either way, the anti-union forces will succeed in damaging unions.

The people who are getting hurt in this battle are the individual workers and their families. Their voice in our political process diminishes the more corporations contribute to elections. A corporation's wealth, after all, was created by the labor of its employees.

Unfortunately, those employees have absolutely no control over how that money is spent. Corporations operate almost like a feudal monarchy, where a CEO or board of directors makes all the decisions, with no input from the masses of people under their control.

The employees, in fact, are often the owners of the very companies that are trying to silence them. Millions of workers throughout the country have billions of dollars invested in pension funds, which own stock shares of every publicly-traded corporation.

The employee-owners, however, are powerless to prevent companies from spending money on causes they oppose. They work for the companies, their labor creates the companies' income, and they are part owners of the companies. But they have absolutely no voice in the companies' political agenda.

Prepared in part with information provided by local unions of West Michigan.

Unions embody the best of democracy

The dictator-like methods used in corporations stands in direct contrast to the leadership of labor unions. Union members elect their own officers and vote on their constitution and by-laws, the amount of their dues and how the money is spent. They and their elected leaders decide what issues their union will support. Unions are highly democratic at all levels, and operate under the principle that the majority rules.

In a sense, they function like our nation's democratic system. The people elect their representatives to the legislature, who make decisions on behalf of the people who elected them. Nobody supports everything the legislature does, but we all pay our taxes and obey all laws because *the majority rules*. If we do not support our elected representatives, we can vote them out of office in the next election.

This is exactly how a union operates. Its leadership is chosen by the membership, and elaborate rules and laws ensure that they run according to democratic principles. If a union official does not follow the will of the majority of the membership, he or she can expect to be voted out of office in the next election.

Supreme Court forbids male-on-male sexual harassment

Case expands the reach of Title VII anti-discrimination laws

By Thomas B. Cochrane

The United States Supreme Court recently decided *Oncale v. Sundowner Offshore Services*, which expands the reach of existing sexual discrimination laws, while at same time signaling the Court's concern that discrimination must be judged by the context in which it occurs.

The Plaintiff in the case, Joseph Oncale, filed a complaint against his employer, Sundowner Offshore, claiming he was sexually harassed by male coworkers in his workplace.

The only question decided by the Court was whether Title VII of the Civil Rights Act of 1964 prohibits same-sex harassment claims.

Title VII is the main federal law prohibiting sexual discrimination, and the Courts have long-held that the law prohibits discrimination against a woman by a man, and discrimination by a man against a man to benefit a women.

In *Oncale* the Court unanimously held that same-sex harassment is prohibited by Title VII just like other forms of sexual harassment.

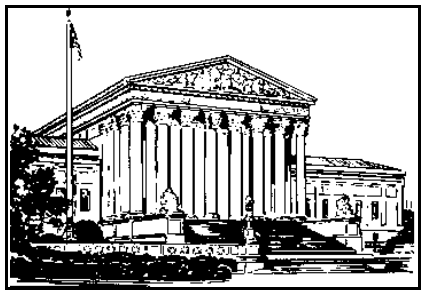
This decision is an expansion of existing law and can be viewed as being favorable to employees. Mr. Oncale now has the right to take action against his employer, whereas without this decision some courts would have dismissed his suit.

What the Court gives with one hand, however, it takes away with the other. The Court's opinion was drafted by Associate Justice Antonin Scalia, nearly the most conservative member of the court.

Portions of Justice Scalia's opinion provide a glimpse into the mind of the Court, indicating how it may rule in future cases.

The Court said sexual harassment depends on the context in which it occurs.

Justice Scalia wrote that "workplace harassment, even harassment between men and women, is not automatically discrimination merely because the words used have sexual content or connotations. The critical issue is whether



members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed."

"Harassing conduct," he wrote, "need not be motivated by sexual desire to support an inference of discrimination on the basis of sex."

In any discrimination suit, the plaintiff must show "the conduct at issue was not merely tinged with offensive sexual connotations, but actually constituted discrimination *because of* sex."

Title VII, said Justice Scalia, does not outlaw sexuality in the workplace, such as male-on-male horseplay or intersexual flirtation.

There is a difference between "innocuous" interaction between people of the same sex and of different sexes, and prohibited sexual discrimination.

The law prohibits only behavior so objectively offensive as to alter the conditions of the victim's employment. Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment as judged by a reasonable person is not illegal.

Justice Scalia added that the "social context" must be taken into consideration. For example, a football player's working environment is not severely abusive if the coach smacks him on the buttocks as he heads onto the field -- even if the same smack delivered by the coach on his secretary's buttocks back at the office would be abusive.

"Common sense," he says, "and an appropriate sensitivity to social context, will enable [us] to distinguish between simple teasing or roughhousing between people, and conduct which a reasonable person would find severely hostile or abusive."

The language of the opinion may indicate the Court is going to be less sympathetic in the future to claims of harassment, and it is unclear for the moment how the law may develop.

McCroskey Law Offices advises unions and individuals to err on the side of caution when considering what conduct may be permissible under Title VII.

Until the Court clarifies the law more, rely on the old maxim "better to be safe than sorry." If the conduct in question could plausibly be viewed as sexual harassment, take it seriously, and treat it as if is illegal harassment, at least until you can get legal advice.

Attorney Thomas B. Cochrane practices employment law, labor relations and workers compensation.

Without a union workers can be fired at any time

A union is almost your only protection against unjust discharge

by John P. Halloran
and Thomas B Cochrane

Most employees believe their employer can only discipline or fire them for a good reason. People call us almost daily saying they were fired unfairly, and want to sue to get their job back. In almost every case, however, we have to tell them there is nothing we can do.

In Michigan, almost all employees work at-will, unless they belong to a union. At-will means the employee can be fired at any time, for any reason, or even for no reason. The employee is subject to the *will* of the employer.

Almost the only exceptions to this rule are when an employer fires someone for a reason that Congress or the state legislature has specifically made illegal. For example, an employer may not fire someone because of their race or gender, because there are laws which say race and gender discrimination are illegal.

The Michigan Supreme Court has reaffirmed that the vast majority of employees are presumed to be employed at-will. In *Schippers v. SPX*, decided in 1993, the Court showed how far it was willing to go to find that the surrounding circumstances do not create a just-cause employment relationship.

In *Schippers*, the employee was told that unless he did something seriously wrong, he could keep his job until retirement. He checked this out with three management people, including his immediate boss. Also, the plant manager testified that it was custom and practice only to fire an employee for just cause.

The Court found these reasons insufficient, and refused to return Schippers to his job or award him damages.

The Court said it would find the employee had a just-cause employment relationship *only* when the oral statements or the company writings clearly and unequivocally establish just-cause employment. The problem is, it is very easy for a defendant employer to disavow any statements it makes. Any employee relying on the employer's oral statements had better have the statements made in front of a minister, rabbi, or imam.

Most Company writings, usually the company handbooks, contain statements that the company can change policies at any time, that they do not establish a contract, or that the company does not intend to be bound by the writing.

Such words of disclaimer will probably be found by the courts to be sufficient to protect the employer, and result in the employee's case being dismissed.

One of the most valuable services a union performs for its members--some people may say the *most* valuable service--is protecting employees from being unjustly discharged.

A union contract contains a provision saying employees can only be fired for just cause. If an employee is fired unfairly, the union can protest the firing on the grounds that it violates the contract, and get the employees' job back.

Without a union contract, employees a virtually unprotected against the whims of their employer. There is nothing they can do if they are fired unfairly -- except file for unemployment compensation.

Attorney John P. Halloran specializes in employment discrimination, automobile accidents, and workers' compensation.

Attorney Thomas B. Cochrane practices employment law, labor relations and workers compensation.

Mandatory urine tests may violate the ADA

The Second Circuit Court of Appeals ruled recently that an employer violated the Americans with Disabilities Act when it discharged employees who could not participate in a urine screen drug test because of bladder problems.

The company did not fire any employees with healthy bladders who were able to give a urine sample.

The employer's testing policy treats employees with bladder problems who are also recovering drug addicts differently from employees who have bladder problems but are not recovering addicts.

The employer required recovering addicts to take a drug test once a month, but only required employees without a record of addiction to take a test once every five years.

This is disciminatory because recovering addicts who cannot provide a urine sample will be discharged after one month, whereas any other employee unable to provide a sample would only be fired after five years.

Buckley v. Consolidated Edison Co. of N.Y., 7 Am. Disabilities Cas. (BNA) 794 (2d Cir. 10/8/87). *Reported in* 156 L.R.R.M. (BNA) 322.

Include statement that Spanish language service is available.

Also a cut-out form for ordering newsletter, and announcement of FMLA pocket guide.

Corporate income tax

rose about 13% in 1994 to $135.5 billion according to the IRS. Total corporate taxes account for only 12.5% of the total amount of taxes taken in by the federal government. In the 1960s corporate taxes accounted for more than 20%.

U.S. economy will grow more slowly in 1998

The United States posted record economic growth in 1997, but many private and government forecasters are predicting that growth will be slower in 1998.

The ongoing domestic labor shortage and the eventual impact of the Asian financial crisis will combine to keep growth around 2.1 percent during 1998.

In 1997 gross domestic product rose about 3.9 percent.

Reported in The Washington Post National Weekly Edition.