

EMPLOYMENT LAW UPDATE

Juan C. Araneda

Jennifer A. Becker

David P. Borovsky

Robert J. Buccieri

Chip Cox

Kim Dincel

Edward F. Donohue, III

Kathleen M. Ewins

Howard M. Garfield

Jason A. Geller

J. Michael Higginbotham

John B. Hook

William L. Jacobson

Anna Kapetanakos

Joseph P. McMonigle

Douglas J. Melton

Jessica B. Rudin

Steven Sharaftian

Jennifer W. Suzuki

Jeanette Traverso

Karen L. Uno

Seth E. Watkins

Gerald G. Weisbach

Kevin D. Whittaker

Irene K. Yesowitch

March 26, 2004

Issue No. 107

California Law

Hernandez v. Hughes Missile Systems Company **04 C.D.O.S. 2442 (March 23, 2004, 9th Cir.)**

An Employer May Violate The Americans With Disabilities Act By Refusing To Re-Hire A Recovered Drug Addict.

By Jason A. Geller

Plaintiff Joel Hernandez resigned his employment from Hughes Missile Systems Company instead of being terminated for violating workplace rules after he tested positive for cocaine use. Thereafter, he re-applied for the same position that he held before his resignation. However, the company refused to re-hire him on the basis of an unwritten rule against re-hiring former employees whose employment ended for violations of company personnel rules. The trial court granted summary judgment in favor of the employer and Hernandez appealed.

The Ninth Circuit reversed the summary judgment. The Americans with Disabilities Act ("ADA") makes it unlawful for an employer to discriminate against a "qualified individual with a disability." The ADA protects individuals who have successfully completed or are participating in a supervised drug rehabilitation program and are no longer using illegal drugs.

The Ninth Circuit held that there was evidence to suggest that the Hughes' employee who was reviewing Hernandez' second application was aware that he was a recovering addict, and therefore could have considered this information in refusing to re-hire him. There was also evidence of conflicting explanations by Hughes for its reason not to re-hire him and little evidence of the scope of the alleged unwritten policy against re-hiring former employees who were discharged for violating company rules.

Employers should be aware of the protected status under the ADA for employees who have recovered from drug or alcohol addictions and should maintain confidential information, such as medical information regarding drug addiction, in secure places that are separate from personnel files. This will help to avoid the inference that the employer had considered the previous addictions in its employment decisions.

This publication is intended for general information purposes only and does not constitute nor is it intended to constitute legal advice. The reader must consult with legal counsel to determine how laws or decisions discussed here apply to the reader's specific circumstances including whether the case may have been depublished after the date of this publication.