

## What's smart and what's legal don't always match

By **Robin E. Shea** on March 23, 2011

It's legal for me, an adult, to live on a diet of candy bars and milkshakes, but probably not prudent. (Sounds kinda tasty, though.)

Similarly, in the employment world, what we can get away with is not necessarily what we ought to do.

Jewell Lim Esposito, at our sister blog, *Employee Benefits Unplugged*, reports the Supreme Court's refusal to review a decision from the U.S. Court of Appeals for the Third Circuit (Delaware, New Jersey, and Pennsylvania) holding that an HR manager's complaint about possible violations of the Employee Retirement Income Security Act were not protected.

Legalities aside, Jewell concludes by questioning the wisdom of firing an HR manager for a reason like that. I have to agree -- to me, this is the HR equivalent of the candy-bars-and-milkshakes diet.

Even though this type of firing apparently doesn't violate ERISA, it's probably still illegal under some other theory. How long do you think it would take for a good plaintiff's lawyer to come up with a claim based on these allegations? How about a wrongful discharge/public policy claim based on her internal complaints of misrepresentation? (There. That took me less than five seconds.)

Conversely, Suzanne Lucas at *Evil HR Lady* has a very sensible post explaining why anti-bullying laws are a bad idea. Yes, bullying is bad, she says, but not everything bad ought to be illegal. She provides a number of reasons why anti-bullying legislation will make it nearly impossible to manage a workplace, and she's taking some heat about it from her commenters. If we want to eat candy bars and milkshakes all the time . . . well, by golly, it's a free country.

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