



Week of **November 9, 2010**

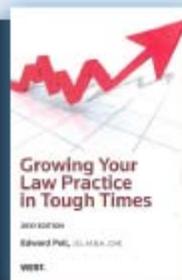
New Ways for Law Firms to Get in Trouble

It used to be that law firms only had to worry about getting into such "minor" legal trouble as malpractice or malfeasance. Now, with the turmoil in legal hiring and firing the past several years, new causes of action seem to be appearing daily. Firms have already been successfully sued for age discrimination in the dismissal of partners; these recent news items would appear to expand the list of problems.

Exhibit A. A Texas law firm lost its defense against a lawyer it had hired. The plaintiff worked for another law firm and was lured away based on alleged representations of firm's future and the collegiality of its founding partners, and found neither to his liking. Does this mean there will be an increase in litigation from dissatisfied lawyers claiming negligent misrepresentation when their lateral moves do not turn out as desired? And if firms enticed the move, are they at risk of being sued by the first law firm for interference with contractual relations?

Exhibit B. A recent law school graduate filed a lawsuit in San Francisco Superior court against a firm that extended her an offer of employment, deferred it and then withdrew it, saying the firm didn't have the resources to hire anyone in the near future. Among the counts alleged in the litigation are racial discrimination, sex discrimination and breach of contract.

Exhibit C. A major player in the IP field announced that it was calling off its merger plans with another IP firm, ostensibly because of client conflicts of interest. However, at the same time the firm (1) announced firings/terminations/layoffs (say it anyway you want) of lawyers and staff due to a downturn in patent litigation, and (2) announced the hiring of first-year lawyers due to an increase in patent counseling and reexamination work. From the outside, at least, it looks like the firm disposed of higher priced, experienced lawyers to hire lower priced younger



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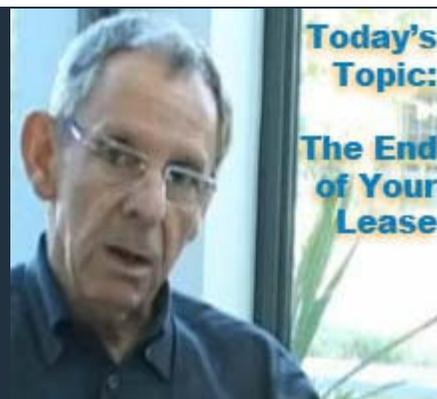
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ones. When industry does this, it's called "age discrimination."

Law firms are not exempt from the legal requirements to operate a workplace free from discrimination. That means ensuring that characteristics other than an individual's skills, experience and knowledge do not become factors in making employment decisions. However, firms by their traditional nature as partnerships are highly subjective and personalized environments, in which employment decisions can be more arbitrary than the law allows. Consider your firm in light of the exhibits above and ask if your treatment of similar individuals can be considered fair and unbiased. If not, you may well be risking a discrimination lawsuit.



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Personal Commentary

The end of 2010 is fast approaching. What are you doing to complete your goals for the year? What are you doing to set your priorities for next year? Will the new discussions on changes to the ABA Model Rules about the use of social media impact you and your communication efforts with clients and prospective clients? There is much in our world, from rules governing our profession to rules governing our economy, that is "up in the air." But, don't wait! This is not a time to sit on the sidelines waiting for things to happen to you. Take a proactive role in the development of your business and the value you provide to your clients.

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