



# Cincinnati Law Library News

A Monthly Newsletter from the Cincinnati Law Library Association

March 2009

## New Developments Will Expand the Scope of Employee Lawsuits

Written by David A. Skidmore, Jr. and Jeffrey S. Shoskin, reprinted with permission.

Two recent actions, one by President Obama and one by the Supreme Court, will impact employers. Although unrelated, both actions will expand the scope of employee lawsuits.

not have a civil rights agency) from the date of her **last** paycheck. Jill's employer will have to defend the decision made 10 years ago to pay Jill less than Jack.

### *NEW LAW INCREASES TIME PERIOD TO FILE PAY DISCRIMINATION CLAIMS*

Yesterday, President Obama signed his first significant piece of employment legislation, the Lilly Ledbetter Fair Pay Act of 2009. The Act overturns a 2007 Supreme Court decision, *Ledbetter v. Goodyear Tire & Rubber Co.*, which curtailed the time period (known as the statute of limitations) to bring pay discrimination claims. The Act re-starts the statute of limitations "clock" each time an employee receives "wages, benefits or other compensation" based in whole or in part on a discriminatory action. The new law applies to pay discrimination based on race, color, religion, sex, national origin, age, and disability.

Employers who commit pay discrimination are liable under federal law for up to two years of back pay, emotional distress damages, punitive damages, and attorneys' fees. Additionally, the Act is retroactive, applying to all claims of pay discrimination made from May 28, 2007, forward.

Pay discrimination claims may become more prevalent. In light of this change in the law, employers should consider documenting the basis for pay decisions, similar to the way discharge decisions are documented. Without this documentation, the practical difficulty is that management (assuming the same decision-makers still work for your company) may not remember why Jack and Jill were paid differently so many years ago. As a result, the need for accurate and complete documentation increases. Furthermore, Plaintiff attorneys may begin requesting pay and compensation data beginning at the date of hire.

How does this new law affect employers? Suppose Jill believes she has been paid less than Jack (because he is a male) for the last 10 years. Jill claims that her paychecks are the fruit of the original discriminatory decision made 10 years ago to pay Jack more than her. Jill can now file suit within 300 days (or 180 days if her state does

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## The Cincinnati Law Library Association

Hamilton County Courthouse  
1000 Main Street, Room 601  
Cincinnati, OH 45202

513.946.5300

Fax: 513.946.5252

Circulation: 513.946.5300

Reference: 513.946.5300

Open Monday-Friday 8 - 4

[www.cincinnatiilaw.org](http://www.cincinnatiilaw.org)

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## Tech Tip: Ohio Jury Instructions Reorganized

Julie Koehne, Assistant Law Librarian

Ohio Jury Instructions published by Lexis recently reorganized into self-contained civil and criminal volumes. According to the Ohio Judicial Conference, “The purpose of the reorganization is to simplify use of OJI by judges and practitioners. Users will no longer have to switch back and forth between the current Vol. 1 ‘General Instructions’ and the substantive instructions contained in the remaining volumes. Also, the numbering of all instructions has been revised and simplified. Instructions will now be identified as ‘CV’ (Civil) and ‘CR’ (Criminal). For example, current 4 OJI 503.01, dealing with Aggravated Murder, becomes CR 503.01. A [‘Correlation Table’](#) will be included in each volume containing previous and new section numbers.” Below is a glimpse of the Correlation Table. You may access the table on our website at [http://hamcostage/cinlawlib/images/OJI\\_Renumbering.pdf](http://hamcostage/cinlawlib/images/OJI_Renumbering.pdf)

Ohio Jury Instructions  
OHIO JURY INSTRUCTIONS Copyright 2008 (c) The Ohio Judicial Conference

Publication Information

*1 OJI*

Scope

**CIVIL INSTRUCTIONS CORRELATION TABLE**

Previous Instruction Number	New Edition Instruction Number
1.01	<i>OJI-CV 101.01</i>
1.03	<i>OJI-CV 101.03</i>
1.05	<i>OJI-CV 101.05</i>
1.07	<i>OJI-CV 101.07</i>
1.09	<i>OJI-CV 101.09</i>
1.11	<i>OJI-CV 101.11</i>
1.13	<i>OJI-CV 101.13</i>
1.15	<i>OJI-CV 517.15</i>
1.17	<i>OJI-CV 517.17</i>

**CRIMINAL INSTRUCTIONS CORRELATION TABLE**

Previous Instruction Number	New Edition Instruction Number
1.01	<i>OJI-CR 101.01</i>
1.03	<i>OJI-CR 101.03</i>
1.05	<i>OJI-CR 101.05</i>
1.07	<i>OJI-CR 101.07</i>
1.09	<i>OJI-CR 101.09</i>
1.11	<i>OJI-CR 101.11</i>
1.13	<i>OJI-CR 101.13</i>
1.15	<i>OJI-CR 101.15</i>
1.17	<i>OJI-CR 101.17</i>

## *SUPREME COURT EXPANDS SCOPE OF RETALIATION CLAIMS*

In the last few years, the Supreme Court repeatedly has expanded the law to protect employees who make complaints of discrimination, harassment, or other illegal activity. Earlier this week, the Supreme Court unanimously ruled that employees who voluntarily cooperate with an employer's internal investigation of discrimination or harassment are protected, even if the employee did not initiate the investigation and had not filed a formal discrimination charge with the EEOC or a state agency.

In *Crawford v. Metropolitan Government of Nashville and Davidson County*, Vicky Crawford participated in her employer's internal investigation of another employee's sexual harassment complaint. During the investigation, Crawford volunteered that she also had been sexually harassed in the workplace by the targeted officer. Crawford was later terminated for embezzlement. Crawford, however, claimed she was terminated for reporting her harassment experience during the investigation.

Federal law makes it unlawful to retaliate against an employee who has opposed a discriminatory practice or filed a charge, testified, assisted, or participated in an investigation, proceeding, or hearing. In the *Crawford* case, the lower courts narrowly held that the anti-retaliation provision demanded "active, consistent" opposition activities. Crawford did not meet that requirement because she had not initiated any complaint prior to the investigation--she simply answered her employer's questions. The Supreme Court disagreed, ruling the federal anti-retaliation provision extended protection to employees who spoke out about discrimination, not just on their own initiative, but also in answering questions during an

internal investigation. The Court reasoned the term "oppose" went beyond "active, consistent" behavior and applied to employees who merely disclosed discrimination without taking any further action. Thus, an employee can "oppose" discrimination by responding to someone else's questions, as well as by initiating a complaint.

So now what? The number of employees protected by the federal anti-retaliation provision has dramatically increased. Therefore, when making adverse employment decisions, employers should be cognizant that potential retaliation claims could be brought by passive participants in discrimination or harassment investigations, as well as those employees whose complaints triggered the investigation or who filed a discrimination charge or lawsuit.

*David Skidmore is a Member of Frost Brown Todd LLC and practices in the area of employment law. He represents employers in a variety of employment matters, including wrongful termination, discrimination, harassment, non-compete agreements, and trade secrets. His practice is divided between offering advice and counsel to employers, and litigating on their behalf in court. He has litigated cases in Ohio, Kentucky, Indiana, Colorado, Nevada, Iowa, Illinois, New Jersey, Florida, Tennessee, New York, Utah and Michigan. He has successfully handled class action employment cases and multiple cases against the EEOC. He is listed in The Best Lawyers in America and has been named an Ohio Super Lawyer.*

*Mr. Shoskin represents employers in all aspects of private and public sector employment and labor relations matters. He has served as lead counsel in state and federal court litigation, as well as before various state and federal administrative agencies and boards. Mr. Shoskin also has represented clients in collective bargaining negotiations, union campaigns, and arbitration proceedings.*

*Additionally, he has provided in-depth counseling and training on a wide array of employment law topics (e.g., the FMLA, the ADA, wage/hour, discrimination, harassment, wrongful discharge) and has assisted clients in drafting employee handbooks, employment forms, and confidentiality, non-compete, employment, and separation agreements.*

## Social Networking, Web 2.0, and Your Law Library

Mary Jenkins, Law Librarian and Director

The Cincinnati Law Library connects with its users, enables staff communication, and engages in its professional circles with several Web 2.0 technologies. How would you like to connect with us? Let me know what would be useful. Feel free to contact me (<mailto:mjenkins@cms.hamilton-co.org>) if you'd like some guidance with any of these platforms, whether for personal or professional use. If there is sufficient interest, we can offer a workshop here.

### **CLLA's Blog**

The CLLA Blog's (<http://www.hamilton-co.org/cinlawlib/blog/default.asp>) most recent posts appear on the right side of our website's home page at <http://www.hamilton-co.org/cinlawlib/>. Selected last year by the Library of Congress for its archive of authoritative blawgs, our Law Library's blog features news items with historical context or links to other related issues and content. Readers can find it on our website or subscribe to it via an RSS feed. Comments from readers are welcome. Thinking of starting a blog? You should consider WordPress <http://www.wordpress.org> and Blogger.com <http://www.blogger.com>, though there are many other applications you might want to compare at [www.webblogmatrix.org](http://www.webblogmatrix.org).

### **LinkedIn and Facebook**

There are many social networking communities on the web. I have profiles on LinkedIn (<http://www.linkedin.com>), Facebook (<http://www.facebook.com>), and Law Libraries & Librarians (<http://www.lawlibraries.ning.com>), to name a few. You can control your content; it doesn't have to be uncomfortably revealing! You might consider joining LinkedIn or a law-specific community like Legal OnRamp (<http://www.legalonramp.com>) or Lawyrs.net at (<http://www.lawyrs.net>) if you haven't already. Within professional groups, you may want to post a question to or offer opinions or advice to your peers or collaborate with colleagues on a presentation or initiative. You may prefer "live" gatherings like meetings of bar association practice groups, for example, but these social networks can connect you to far-flung colleagues in useful ways.

### **Instant Messaging**

You can reach me via Yahoo Messenger (<http://messenger.yahoo.com>), Google Talk ([www.google.com/talk](http://www.google.com/talk)), and AIM (<http://chat.aim.com>) at jenkinscinci. If you have a detailed legal research question, a phone call or email might be better. I use Meebo (<http://www.meebo.com>) to facilitate my chat with people on a number of different IM platforms. Trillian (<http://www.trillian.com>) is another good, cross-platform application. IM is great for quick, real-time chat ("Can you meet for lunch?" "Who was that client you just introduced me to?" "Here's that link I mentioned.") Users can retain chat sessions or not, depending on preference. Some workplaces block instant messaging but, if you use IM, you know how helpful it is for quick, live conversations that seem too informal or time-sensitive for email.

### **Wikis**

A wiki is an editable webpage to which all users can easily add content. Using WYSIWIG editing, wikis break down the barriers imposed by more complex HTML. There are a number of good wiki hosting sites and wiki applications: MediaWiki (<http://www.mediawiki.org>), Wikispaces (<http://www.wikispaces.com>), Zoho Wiki (<http://wiki.zoho.com>) and PBwiki (<http://www.pbwiki.com>) are all fine options. If you would like to know more about wiki features and options, use WikiMatrix (<http://www.wikimatrix.org>) to compare options. Like many workplaces, the Cincinnati Law Library staff use an internal or private wiki for information sharing; for example, policies and procedures, notes from seminars and meetings, and project planning and implementation. The Ohio Law Library Consortium has a wiki for sharing documents, court rules, calendar of events, forms, and news. In these cases, a wiki is far preferable to a website with bottlenecks or limitations on editing, plus users aren't left wondering where a document or information is: users can post just about any file type to the wiki and can copy and paste content from emails, manuals, spreadsheets, and so on.

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**Google Maps**

You might try marketing your practice (or finding businesses and services) with Google Maps (<http://maps.google.com>). I developed a Google Map of all of Ohio's county law libraries. That probably has limited appeal to you (you know where *your* library is!) but consider Google Maps as a way for potential clients to find firms by location (for example, when looking for a practice within 1 mile of home or near another familiar location) or to provide location information for an organization's members. Google Maps are interactive: users can add information, comments, and ratings. I've viewed our law library membership by zip code using Google Maps to get a visual representation of the geographic distribution of our members and I create and use Google Maps for places of interest, dining, and trip planning.

**Google Docs**

Looking for a means of collaborating on documents? Google Docs (<http://docs.google.com>) facilitates online group creation editing, and publishing of documents. I use this for committee work when I can't count on all members having access to Microsoft Word or large file capacity, when I don't care to merge multiple versions of a document, or when I'm collaborating with people outside of my workplace's IT network. Google Docs employs WYSIWYG ("what you see is what you get") editing to format and edit documents which means it is simple to use, no matter what word processing application users are accustomed to. Other online collaborative editing sites include Zoho Writer and Office Suite (<http://www.zoho.com>), Gobby (<http://gobby.0x539.de/trac/>), Socialtext (<http://www.socialtext.com>), and Writeboard (<http://www.writeboard.com>), to name a few.

**Web Conferencing**

The Law Library offers phone and videoconferencing as many of our members know. To sign up for use of the equipment, please use the form on our website at <http://www.hamilton-co.org/cinlawlib/images/Inmate%20videoconference%20form.pdf> or contact Madonna Stoneking (<mailto:mstoneki@cms.hamilton-co.org>). We can provide web conferencing capability as well, for groups up to 15 people. If you would like more information, please contact me at <mailto:mjenkins@cms.hamilton-co.org>. We haven't set this up for a member yet, so we'd be glad to have an opportunity to show its usefulness. If you have used WebEx (<http://www.webex.com>), GoToMeeting (<http://GoToMeeting.com>), or Live Meeting (<http://office.microsoft.com/livemeeting>), you know the benefits of this sort of combined online group slide sharing, real-time VOIP (voice, audio), text chat, recording – many of the benefits of an in-person meeting.

**Conclusion**

You may find these and other collaboration and productivity tools useful for your practice. Do you use Web 2.0, social networking, or open source technologies in innovative, efficient, and effective ways that might be of interest to other Cincinnati Law Library Association members? If you have a story you'd like to share, let me know <mailto:mjenkins@cms.hamilton-co.org>.

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For more information about Web 2.0, check out the blog post, [Attorneys Scared of Web 2.0? ABA Journal Article Says Yes.](#), By Stephanie Kimbro

<http://virtuallawpractice.org/2008/10/01/attorneys-scared-of-web-20-aba-journal-article-says-yes/>

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- Alerts
- Shepard's Alerts
- Segment searching

Contact Madonna Stoneking at 513.946.5300 or [mstoneki@cms.hamilton-co.org](mailto:mstoneki@cms.hamilton-co.org) to register.

## March 2009 Law Library Newsletter

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Hamilton County Courthouse  
1000 Main Street, Room 601  
Cincinnati, OH 45202  
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