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CASES YOU SHOULD KNOW ABOUT

Welcome to *Ancel Glink Defense E-News*, our electronic newsletter. In this newsletter, we focus on the latest court decisions and legislative changes in litigation which may affect you.

Ancel Glink Defense E-News is a publication of the defense litigation group of Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C.

For more information about this edition of the *E-News*, please contact litigation partner, [Lucy Bednarek](#).

Americans with Disabilities Act

Reassignment of Disabled Employees to Vacant Positions

EEOC v. United Airlines: 693 F.3d 760 (7th Cir. Sept. 7, 2012)

The Seventh Circuit recently held that Illinois employers must establish policies to reassign employees to vacant positions when their disability prevents them from continuing in their current positions. The only exception is if the reassignment would create an undue hardship for the employer. Specifically, the court found that United Airlines' accommodation policy violated the ADA where they gave preferential treatment to individuals who, because of their disability, could no longer do essential functions of their current job, even with reasonable accommodation, by assigning said individuals to vacant positions for which they qualified, but only if there were no more-qualified candidates. In so holding, the Seventh Circuit overturned its previous decision in EEOC v. Humiston-Keeling, 227 F.3d 1024 (7th Cir. 2000), that the ADA does not require employers to reassign employees whose disability would cause them to lose their position.

Governmental Immunity: Recreational Property

Park District Immune for Snow Removal Activities

Moore v. Chicago Park District, 2012 IL 112788 (Oct. 18, 2012)

A participant in a park district class fell while trying to step over a pile of snow in a park district parking lot that had accumulated because of recent snow plowing by the district. She fractured her femur and had surgery, but later suffered complications as a result of the surgery which led to her death. Her estate filed a wrongful-death action. The Illinois Supreme Court held the park district was immune from liability under Section 3-106 of the Tort Immunity Act, which provides that there can be no liability "based on the existence of a condition of any public property intended or permitted to be used for recreational purposes." The court held that snow and ice constitutes a condition of any public property, within the meaning of Section 3-106. The court explained that whether the accumulation was natural or unnatural was irrelevant to the question of Section 3-106 immunity.

Governmental Immunity: Willful and Wanton Conduct

Warning Label on Volleyball Net Not Sufficient to Put School on Notice of Danger

Leja v. Community Unit Sch. Dist. 300, 2012 IL App (2d) 120156 (Nov. 6, 2012)

A high school student sued for injuries she sustained in her school's gym. The student was cranking a volleyball net when it either broke loose or snapped back and hit her in the face. She alleged the school was negligent and engaged in willful and wanton conduct because the warning label on the net crank stated: "caution, do not overtighten - may cause injuries or damage to equipment." The Illinois Appellate Court affirmed the dismissal of plaintiff's complaint, holding the allegations that the equipment label warned of a danger did not state a claim for willful and wanton conduct, explaining the label was not sufficient to put a school on notice that a product poses a high risk of injury.

Public Safety Employee Benefits Act

City Not Required to Pay Premium for Supplemental Medicare Benefits

Pyle v. City of Granite City, 2012 IL App (5th) 110472 (Oct. 16, 2012)

Pyle, a former firefighter, filed suit to challenge the City's denial of health insurance benefits under the Public Safety Employee Benefits Act (PSEBA). The Illinois Appellate Court held Pyle was catastrophically injured because he was granted a line of duty disability pension, following the Illinois Supreme Court's decision in Krohe v. City of Bloomington, 204 Ill.2d 392 (2003). The Appellate Court further held that once Pyle was eligible for Medicare, the City was not required to pay the premium for his supplemental insurance coverage. In other words, where an employee lives to become Medicare eligible, the City's payment of PSEBA benefits were reduced entirely, meaning the City no longer had to pay Pyle's health insurance premiums. The Court also found there was no statutory requirement that the City be responsible for supplemental Medicare coverage offered by the City's group plan.

Freedom of Religion

City Did Not Discriminate Against Employee Based on Religion

Porter v. City of Chicago, 2012 WL 5439894 (7th Cir. Nov. 8, 2012)

An employee of a records services division of a police department filed a Title VII action against the City, alleging the City failed to accommodate her religious practices, and also alleged religious discrimination and retaliation. The records division operated 24 hours a day, 7 days a week. The employee alleged she was discriminated against because of her Christian religion by scheduling her to work on a Sunday, and failing to accommodate her request for non-Sunday work assignments. The Seventh Circuit held the City's offer to assign her to a later shift on Sunday so she could attend church services was a sufficient accommodation.

Freedom of Information Act

High School's Failure to Disclose Letter Resulted in Fines under FOIA

Rock River Times v. Rockford Public Sch. Dist. 205, 2012 IL App (2d) 110879 (Oct. 3, 2012)

A high school principal wrote a letter in response to a reprimand by the superintendent. Rock River Times, the local newspaper, filed a FOIA complaint against the school district after it refused to disclose the letter pursuant to the newspaper's FOIA request. The school district eventually disclosed the letter, after claiming various exemptions, including personal privacy, the Personnel Records Review Act, and the exemption for records relating to a public body's adjudication of an employee grievance or disciplinary case. The Illinois Appellate Court held that because the school released the letter before the court ordered any relief, the newspaper was not a prevailing party under FOIA and not entitled to attorneys' fees. However, the court imposed a \$2,500 penalty on the school for willfully and intentionally violating FOIA by raising the third exemption after the first two exemptions were denied.

ANCEL GLINK DEFENSE VICTORIES

Ancel Glink's litigation team recently defended and won the following notable cases:

Wrongful Death

School District Not Liable for Death of Student by Another Student/Assailant Attorney Darcy L. Proctor

Hernandez v. South Berwyn Sch. Dist. 100, 2012 IL App (1st) 113407-U, Illinois Appellate Court, First District (Sept. 10, 2012)

The Illinois Appellate Court recently affirmed the decision of the circuit court granting summary judgment in favor of School District 100 in a wrongful death case filed by the family of an eighth grade student who was stabbed and killed by another student after school, off-school grounds. The Appellate Court held the School District was not liable because plaintiffs failed to show that any willful and wanton actions by the District were a proximate cause of Hernandez's death. Significantly, the court held the student/assailant chose to have a knife on his person, chose to interact with Hernandez in a confrontational manner and chose to stab Hernandez, off school grounds and out of sight of school staff, and that none

of the student/assailant's decisions were a foreseeable likely result of any of the District's allegedly willful and wanton actions. The court recognized that even though the District's conduct may have put the student/assailant in proximity to other students, the dangerous ends to which the student/assailant followed that proximity were entirely his own choosing and independent of any willful and wanton conduct by District 100. The court also held that no reasonable school administrator or staff could foresee as a likely, natural and probable result of District 100's alleged willful and wanton conduct that the student/assailant would injure, let alone kill, a fellow student.

The victory in Hernandez is an important case to all school districts and can be relied upon in their defense of off-campus death or serious personal injury cases.

Civil Rights: First Amendment

Termination of Former Police Officer Was Not a First Amendment Violation Attorneys Lucy B. Bednarek and Ellen K. Emery

Lalowski v. City of Des Plaines, 2012 WL 5182764, Northern District of Illinois, Eastern Division (Oct. 18, 2012)

Plaintiff, a former Des Plaines police officer, alleged his First Amendment rights were violated after he was terminated for publicly expressing his disagreement with protestors while off-duty regarding abortion. The Northern District granted summary judgment in favor of the City, holding first that even if plaintiff's speech was protected because it was on a matter of public concern, his termination did not violate his First Amendment rights. The court explained that plaintiff's termination was based on the aggressive and offensive manner in which plaintiff expressed himself, not the subject matter of the speech. In addition, the court held that with regard to plaintiff's speech involving profanity, that loosely touched on a matter of public concern, the City had a legitimate overriding interest in prohibiting their officers from using such profane and insulting language toward members of the public. As a result, his repeated use of profanity served as a legitimate basis for his discharge.

FIRM NEWS AND RECENT EVENTS

Ancel Glink Has A New Website!

Ancel Glink's new and improved website went "live" on November 29, 2012. Features include updated attorney biographies with photos on the "Our People" page. Detailed information about the firm's practice areas can be found at the "Practice Areas" page. You can learn more about the firm and its history on the "About Us" page. We also added a brand new feature called "Recent News" where we will report on events and activities of interest to our local government clients. Visitors will still be able to download for free the entire Ancel Glink Library, as well as other publications, presentations, white papers, and a variety of other materials in our expanded and user-friendly Resource Center. We invite you to check out our new website at <http://ancelglink.com>.

Recent Speeches

Litigation partners Lucy Bednarek and Darcy Proctor recently presented a speech about School Bullying for the National Business Institute, which included information about laws governing student bullying and school prevention. For more information, please contact either Lucy Bednarek at lbednarek@ancelglink.com, or Darcy Proctor at dproctor@ancelglink.com.

RISK MANAGEMENT SEMINARS AND EVENTS

International Association of Assessing Officers (IAAO)

33rd Annual Legal Seminar: Ethics of Social Networking

Julie A. Tappendorf and David S. Silverman

December 14, 2012

Chicago, Illinois

National Business Institute
Police Liability Claims: Legal Issues Involving Local Governments
Darcy L. Proctor
February 4, 2013
Oak Brook, Illinois

ABOUT ANCEL GLINK DEFENSE

The attorneys who comprise Ancel Glink's defense litigation group are dedicated almost exclusively to defending governmental entities in tort, civil rights, employment, business and other claims and lawsuits. In addition to defending municipalities, school districts, park districts, townships and other entities in lawsuits in state and federal courts, Ancel Glink's litigation group handles appeals, administrative hearings, critical incident crisis management, loss control training and seminars, file audits, and special consultation. Visit our web-site at www.ancelglink.com or email us at e-news@ancelglink.com.

Editors: [Thomas G. DiCianni](#) and [Lucy B. Bednarek](#)

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Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C.
Serving Illinois with offices in Chicago, Vernon Hills, Naperville, Bloomington and Crystal Lake

140 S. Dearborn St. Suite 600, Chicago, IL 60603 | 312-782-7606 | www.ancelglink.com
[Contact our Litigation team](#)