

# CERTIORARI

## Journal of Consumer Advocacy

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● **UPDATE**

## We Are Open for Business

As the pandemic wears on, Frasier, Frasier & Hickman, LLP is dedicated to continuing to serve our clients and the community. Our doors have remained open throughout this crisis in an effort to continue to provide vital and essential legal services.

Legal matters have not taken a break during the pandemic and we are prepared and able to handle the evolving changes in courthouse procedures.

At our offices, we are taking precautions to protect the safety of our staff and visitors. While walk-in appointments are still available, the Firm offers a free consultation by phone to anyone interested, and we are requesting that in-person meetings be scheduled ahead of time. We have masks, gloves, and hand washing stations available with plenty of sanitizer.

Our offices also have been deep cleaned and sanitized multiple times in order to insure the safety and comfort of our clientele.

We encourage anyone with a legal question or problem to contact us by phone to see what we can do to help them.

As the State of Oklahoma and various communities are beginning to ease their lock downs, courthouses are reopening in many counties across Oklahoma. The Frasier Law Firm is equipped to send lawyers to any courthouse in the state with proper protective equipment.

The Tulsa County Courthouse has implemented a plan for their courthouse that restricts the number of individuals inside and requires masks. This has made it difficult and time consuming for people to get into



**Frasier, Frasier & Hickman is OPEN! While we will do our best to follow our government's social distancing recommendations, we realize your needs do not stop and we are here to help! Our Firm is happy to accommodate your needs and do our consults in person or over the phone. Call 918-584-4724 today to schedule your consult.**

courts, so we suggest utilizing our services in this time as a way of making sure that your legal needs are met.

The Workers' Compensation Commission has reopened with considerable restrictions. Trials are being scheduled one at a time and most other business is being conducted via e-mail with the judges. There is a tremendous backlog of cases due to the shutdown. While there is movement again, it is quite slow going.

## ● WORKER

### Employers Can Scan for Illness During Pandemic

One of the major concerns of both employees and employers as the COVID-19 pandemic has worn on has been the question of whether or not an employer can require a negative COVID-19 test for a worker before they return to work.

Before the current pandemic outbreak, the Equal Employment Opportunity Commission (EEOC) had administered guidelines that limited obtaining medical information by employers of workers. Now, the EEOC has provided updated guidance as the pandemic has continued.

When an employer covered by the American with Disabilities Act (ADA) has a worker that calls in sick, the employer can ask if they have certain COVID-19 related symptoms including fever, chills,



cough, shortness of breath, or sore throat. The employer has a duty to keep this information confidential.

The EEOC has committed to updating the guidelines as more information is learned about COVID-19.

The EEOC has relaxed a specific guideline in relation to

taking a worker's temperature, as this is a medical exam under the ADA, because one of the symptoms of COVID-19 is a fever. The Centers for Disease Control (CDC) has stated that workers who have COVID-19 should leave the workplace.

Employers could require workers to obtain a doctor's note, but the EEOC suggests reducing the strain on doctors and health care facilities by being flexible and accepting e-mail notes or forms from local clinics.

The ADA requires that any mandatory medical test of employees be related to the job and consistent with business necessity. Employers may take steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others. Therefore, an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus.

Employers should ensure that the tests are accurate and reliable. Employers may wish to consider the incidence of false positives or false negatives associated with a particular test. Finally, note that accurate testing only reveals if the virus is currently present; a negative test does not mean the employee will not acquire the virus later.

Based on guidance from medical and public health authorities, employers may still require – to the greatest extent possible – that employees observe infection control practices (such as social distancing, regular hand-washing, and other measures) in the workplace to prevent transmission of COVID-19.

With these guidelines in mind, employers may take steps to protect their workers from the spread of disease, but the best solution is one where both employees and employers are flexible and understanding in their approach to this pandemic.

## ● UNEMPLOYMENT

The COVID-19 has caused many businesses to close their doors, at least temporarily, laying off many workers.

Workers in this situation who are seeking unemployment benefits in Oklahoma should go to the Oklahoma Employment Security Commission's (OESC) website and apply. The website can be found at <https://oesc.ok.gov/>.

A person is qualified for unemployment benefits in Oklahoma when they:

- become unemployed through no fault of your own;
- are able to work;
- are available to work and registered in OKJobMatch.com, and;
- have earned a minimum of \$1,500 during their base period.

If a person is qualified, before filing they should gather all the necessary information they will need including:

- Social Security Number
- mailing address;
- telephone number;
- e-mail address;
- alien registration number and expiration date, if a non-citizen;
- Oklahoma Driver's License or state-issued ID card number;
- name and address of the company on your paycheck stub or W-2 form;
- employment dates (starting & ending);
- wages earned and how you were paid (hourly, weekly, monthly);
- Form SF8 or SF50 if employed by the Federal government in the last 18 months; and,
- DD Form 214 for military service in the previous 18 months.

With this information in hand qualified applicants may apply via the OESC's website to get their unemployment benefits.

## The End of Racism in Our Society

*Wise words being brought  
To blinded eyes will seem  
as things of nought.  
—Euripides*

With the ongoing events in Ferguson, Missouri, whites seem mystified that riots would occur in a country that has come so far in the civil rights arena. In response, the Tulsa World has carried several editorials by persons of color explaining the frustration that simmers, while society as a whole turns a blind eye. In one, Leonard Pitts notes that the system has “choke[d] off avenues of protest”, creating a frustration that from time to time boils over. We are all reminded of how far we still have to go as a people to bring justice to all. Some recent decisions by our local Federal courts, manned entirely by whites, also point up the disconnect between the white and black experiences.

In one department at a local hospital every person of color (and there were several) thought that a particular manager was racist. There had also been an earlier lawsuit where an employee sued the hospital and claimed that this same manager acted racially. Notwithstanding, the judge



*“The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little.”*

*—Franklin D. Roosevelt, January 20, 1937*

This article was originally printed in the *Oklahoma Eagle* in August 2014.

determined that no reasonable person could conclude that this manager was racist. The case was dismissed without a trial.

If we posit that the racial issue has been solved in America, it is easy to deny every claim. But to do so is to deny the experience of a significant part of our population. To continue to say that their perception is not worthy of consideration is to increase the frustration that ultimately boils over.

In another case, a person of color worked for an Oklahoma state agency. When she complained of discrimination, the state investigated and determined that she *had* been discriminated against. Even with this admission, a Federal judge determined that *no* reasonable person could conclude there was discrimination. The case

was dismissed without a trial.

These decisions are in accord with the U.S. Supreme Court's view that affirmative action is no longer necessary because the race problem has been solved. This view also underlies Federal judicial policy in our circuit. As a result, our court of appeals has acknowledged, “so few [discrimination] cases make it to trial these days”. If there is no widespread discrimination in our society anymore, the claims of it must have no merit.

As these examples show, even in our community, avenues of protest have been closed. So long as what blacks experience is denied as legitimate by those who will not see, so long we will be at risk for another Ferguson.

*—Steve Hickman*

### ● LEGAL SERVICES

## Union Advantage Offers Free and Reduced Fee Services

Frasier, Frasier & Hickman, LLP offers its exclusive Union Advantage program to local unions affiliated with the Firm. With this program, union members and their families can be assured they will receive quality treatment and the possibility of resolving legal questions at a reduced cost.

Union Advantage includes the meat of the former Union Privilege Legal Services program discontinued by the AFL-CIO.

The FF&H Union Advantage program continues to



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offer an array of consumer benefits including free initial consultations and document review, follow-up services and 30 percent discount on non-contingent fee matters.

We also will continue to offer representation in Workers' Compensation, injury, Social Security, and other contingent fee matters. All as we have done in the past.

Our firm has been honored to represent union workers and their unions for almost 70 years and plan to continue that tradition unchanged.



# CERTIORARI

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## ● SUMMER 2020

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## **RETURN SERVICE REQUESTED**

certiorari, (ser-she-eh-ra-re) noun [Latin, to be informed]; to be informed as a means of gaining appellate review; a common writ. When at least four of the nine U.S. Supreme Court justices vote to hear a case, the court issues a writ of certiorari.

## ● WORKER

# Contracting COVID19 at Work Could Yield Workers' Comp Claim

The Corona virus does not discriminate. It can strike anyone, anytime, anywhere. In other words, the virus is not unique to any particular type of activity.

Generally speaking, when someone is exposed to a disease or illness to which the general public is exposed, Workers' Compensation will not apply. However, if a contagious or infectious disease is contracted in the course and scope of employment, then Workers' Compensation may apply.

This means that if your job puts you at a higher risk of exposure than the general public and you contract the virus, then you may well have a Workers' Compensation claim. Some examples of this kind of job include first responders, paramedics, ambulance drivers, nurses, and employees of nursing homes.

In addition, there are those jobs that are considered essential. If you were required to be at work during the state's shelter-in-place requirements and you contracted the virus, then you may have a Workers' Compensation claim.

Of course, contracting the virus is not a reason, in and of itself, to file a claim. However, if you contract the virus and become sick requiring treatment, then you should call Frasier, Frasier & Hickman, LLP and one of our lawyers will help you determine whether there is anything we can do to help you.

