At its meeting in September 2004, the Legal Services Corporation (LSC) Board of Directors asked LSC staff to try to document the extent to which civil legal needs of low-income Americans were not being met, taking into account all the changes in the civil justice system in the last decade, including both LSC-funded services and non-federal resources. As a result, Helaine M. Barnett, President of the Legal Services Corporation, convened a Justice Gap Committee which included individuals from both within and outside LSC with experience in documenting unmet legal needs and conducted a year-long study culminating in the report entitled "Documenting the Justice Gap in America—The Current Unmet Civil Legal Needs of Low-Income Americans."

The study used three different methodologies to examine this question. First, LSC asked its grantees over a two-month period, from March 14, 2005 to May 13, 2005, to document the potential clients that came to their offices that the programs could not serve due to lack of resources. Second, it carefully analyzed the nine studies undertaken over the last five years in individual states about the civil legal problems faced by their low-income residents, examining them for nationally applicable conclusions as well as comparing the results to the 1994 Ameri-
Everyone has their favorite time of the year. I think lots of North Dakotans would put Christmas time on the top of their list for many obvious reasons - presents, family, Christ’s birthday and other religious reasons, time off from work or school, parties, travel, and much more.

To be honest Christmas tops my list too. But, October is a very close second. I really never stopped to think about why before; I wonder – but give it some thought –

The landscape in North Dakota in October is beautiful this time of year. A few more sugar maples and we could hold our own with New England and upstate New York.

The weather is pleasant, not too hot and not too cold. The kids have finally gotten into the swing of school again and are not yet clamoring for a vacation.

At work most businesses can begin to measure their accomplishments for the year and begin to plan for the next year.

But for me, it is more personal. I can look back over five decades and a lot of the things I enjoy in life are highlighted in October.

When my dad was alive, we went pheasant hunting every October, closed up the cabin at the lake, and watched the World Series together. Anyone who has lost a parent knows how important those memories are.

When my daughters were a lot younger (before I-Pods, Abercrombie Fitch, concerts, My Space and cell phones), October meant jumping in piles of leaves, trick or treating, visiting Papa’s Pumpkin Patch and playing touch football together. Anyone who has watched their kids grow older knows how important the memories are of their youth.

When I was a kid I skipped grade school for the first time in October of 1960 to watch the Pirates beat the Yankees in the 7th game of the 1960 World Series. I recall fondly the Saturday trips to Huff with my dad and brothers. I think we threw a football around and searched for good sledding hills for winter. I think I even learned to drive a truck during a couple of those visits to Huff in 1967.

I still remember the Sundays after church in October, when my Grandma May would start making her beef stew again, “because it is starting to get cold again and you boys all need a hot meal.”

Anybody who has hit the half-century mark can really appreciate those childhood memories, when times were simpler and your decisions did not impact people’s lives.

Hey, I think I just figured it out. For me, October is a pleasant time of the year that allows me to reflect on memories of days gone by – times when the world was simpler, when we moved slower, with less gadgets and more compassion.

Have a great October!

“"It’s more fun to talk with someone who doesn’t use long difficult words but rather short, easy words like “what about lunch?” - Winnie the Pooh
can Bar Association national study on the subject. Finally, it totaled the number of legal aid lawyers, those in both LSC and non-LSC funded programs, and compared that to the total number of attorneys providing civil legal assistance to the general population in this country.

All three methodologies demonstrated that there was a significant shortage of civil legal assistance available to low-income Americans. The LSC "unable to serve" study, the first comprehensive national statistical study ever undertaken, established that for every client who receives service, one applicant was turned away, indicating that 50 percent of the potential clients requesting assistance from an LSC grantee were turned away for lack of resources on the part of the program. Because only those with LSC eligible cases who contacted the program for assistance were counted, the study underestimated the unmet need. It is known that many people do not contact a program either because they are unaware they have a legal problem, or they do not know that the program can help them.

The nine recent state studies demonstrated that less than 20 percent of the legal needs of low-income Americans were being met. Eight of the nine studies found an unmet legal need greater than the 80 percent figure determined by the ABA in their 1994 national survey. Finally, in adding up the number of legal aid attorneys serving the poor and comparing that to the LSC-eligible population, it was determined that there is one legal services attorney for every 6,861 low-income persons. By contrast, the ratio of attorneys delivering civil legal assistance to the general population is approximately one for every 525 persons, or thirteen times more.

It is clear from this research that at least 80 percent of the civil legal needs of low-income Americans are not being met. Moreover, 50 percent of the eligible people seeking assistance from LSC-funded programs in areas in which the programs provide service are being turned away for lack of program resources.

Although state and private support for legal assistance to the poor has increased in the last two decades, level (or declining after factoring in inflation) federal funding and an increased poverty population have served to increase the unmet demand. Assuming that state and private funding increases were to keep pace, it will take at least a five-fold funding increase to meet the documented need for legal assistance, and a doubling of LSC’s current funding of the basic field grant just to serve those currently requesting help.

The analysis for the report was concluded in August 2005. Consequently, none of the data in the report reflects the vastly increased need for legal assistance that will result from the impact of Hurricane Katrina by a greatly expanded client-eligible population, not only in the states where the hurricane struck, but across the nation where evacuees have been relocated. A national disaster of this magnitude highlights the critical need for civil legal assistance and reaffirms the need for long-term adequate funding.

(Justice Gap in America Continued from page 1)

Halloween Edibles Fun Facts

- Of all the candy sold annually, one quarter of it is sold during Halloween time (September—November 10) making it the sweetest holiday of the year.
- Tootsie Rolls were the first wrapped penny candy in America.
- The number one candy of choice for Halloween is Snickers.
This is a short summary on **Credit Report Freezes**, a law recently passed by the North Dakota legislature in its 2007 session. This law might affect some low income individuals.

A credit report freeze means that information in your credit report cannot be shared with potential creditors. Credit reports on individual consumers are maintained by three large credit reporting agencies: Equifax, Experion, and TransUnion. When you apply for a credit card, or apply for a loan, what usually happens is that the credit card company, or the bank, will check your credit report with one or more of these agencies. Unfortunately, criminals posing as creditors can also check your credit report and use it as a way to steal your identity. Placing restrictions on who can look at your credit report is one way to help prevent identity theft.

In 2007, the North Dakota legislature passed a law that allows consumers to “freeze,” or restrict, who can look at their credit report. The consumer must ask each credit reporting agency to freeze his or her credit report. When a credit report is frozen, information from that file may not be released to a third party without the express consent of the consumer. The only information disclosed to the third party is that the file has been frozen.

It costs $5.00 with each credit reporting agency to have your credit report frozen. If your report with all 3 credit reporting agencies is frozen, it would cost $5.00 each, or $15.00. For a husband and wife, it would cost $30 to have their separate credit reports frozen at all three agencies ($5 x 3 agencies x 2 people = $30). If you are a victim of identity theft, you don’t have to pay the $5 to have your credit report frozen. Identity theft victims must furnish a copy of their police report or an Affidavit of Identity Theft.

You can request a credit report freeze either by mail or phone. Phone is faster, but you still have to fax or mail documents that verify your identity, such as a driver’s license or utility bill, or something like that. If you request a freeze by phone, the credit reporting agency will give you a phone number to fax your identity information to, but you will also have to provide the agency with your credit card number (so they can charge you the $5 fee). If you are an identity theft victim, you won’t be charged the $5, but you’ll also have to fax your police report or Affidavit of Identity Theft in addition to your driver’s license.

The phone numbers for each of the three credit reporting agencies are:
- Equifax: 800-685-1111 (toll free)
- Experion: 972-390-4179 (NOT toll free)
- TransUnion: 888-909-8872 (toll free)

Forms for requesting a credit report freeze by mail for each reporting agency are available at the North Dakota Attorney General’s website at: [www.ag.nd.gov/CPAT/SecurityFreezeForms.htm](http://www.ag.nd.gov/CPAT/SecurityFreezeForms.htm). The Attorney General’s website also contains an Affidavit of Identity Theft at: [www.ag.nd.gov/CPAT/IDTheft/IDTheftAffidavit.pdf](http://www.ag.nd.gov/CPAT/IDTheft/IDTheftAffidavit.pdf)

Once a request for a credit report freeze is received, the reporting agency must place a freeze on your credit report within 3 business days. If you request a freeze by phone, the 3 business days starts when the reporting agency receives your identification information. If you are a victim of identity theft, the freeze must be placed on your credit report within 48 hours of receipt of the request and police report or Affidavit of Identity Theft.

The credit report freeze stays in effect until it is ended by the consumer, either temporarily or permanently.

(Continued on page 5)
Within 5 business days of the request for a freeze, the credit reporting agency must send you a personal identification number (PIN) or password to use to lift the freeze. If you apply for a loan or a new credit card and need the freeze lifted temporarily for a credit check, you can either lift it for a certain period of time or for a particular creditor. You must provide the reporting agency with proper identification, your PIN, a $5 fee, and tell them how long you want the freeze lifted, or what creditor is allowed to look at your report. The reporting agency has 3 business days to lift the freeze, so it’s a good idea to plan ahead if you know your credit is going to be checked.

Not everyone is prevented from looking at your credit report, even if it’s frozen. Your current creditors, or collection agencies acting on their behalf, can still look at your credit report. Other creditors can review your report for the purpose of sending you pre-approved credit offers (although you can opt out of these by calling 888-567-8688 or visiting www.optoutprescreen.com). Government agencies acting under a court order, subpoena, or search warrant, or collecting child support, can look at your credit report. Prospective landlords or employers can also look at your credit report.

If the credit reporting agency releases information after your file has been frozen to someone who shouldn’t get the information, it must send you a notice within 5 business days after it learns of the error. You can sue the reporting agency for giving your report to the wrong people, too. You can get an injunction to make them stop, civil penalties (either your actual damages or $2,000, whichever is more), and court costs, investigative costs, and attorney’s fees. If the reporting agency gives your report out more than once, each violation is a separate incident for figuring the civil penalties.

“If the person you are talking to doesn’t appear to be listening, be patient. It may simply be that he has a small piece of fluff in his ear”: -Winnie the Pooh
In recent months the STOP Training Committee has been sponsoring multidisciplinary trainings for professionals on how to work with victims of stalking. The multidisciplinary “STOP” training committee was formed in 1999 to collaborate with local agencies within ND to coordinate regional trainings on the topics of domestic violence and sexual assault. During 2007 the topic of stalking was added to the committee’s priority of topics.

The purpose of these trainings is to provide information to professionals on best practices to utilize when working with victims. Trainings have been held in Jamestown and Spirit Lake, with the last one scheduled to be held in Dickinson. The locations have been chosen to provide access to those residing in rural communities. The next available opportunity is in Dickinson on November 13th, 2007.

The agenda has been designed to assist community professionals in creating a Coordinated Community Response to work with victims of domestic violence, sexual violence and stalking in rural areas. Issues addressed throughout the day include the investigation and prosecution of stalking cases, understanding stalking and victimization, challenges faced when providing advocacy for victims, and forensic investigations.

The objectives of stalking training are three-fold:
(2) Inform professionals working with stalking victims of state laws on stalking, collection of evidence, and interviewing/prosecution techniques;
(3) Promote a coordinated community response that incorporates the complex nature of providing services to stalking victims while being sensitive to the needs of the victims.

Those professionals invited to attend include:
- Law enforcement (Sheriff, Police, Campus, etc.)
- Victim Advocates
- Medical Personnel - Doctors, Nurses, EMT’s
- Judges
- Attorneys (Prosecutors, Family Law)
- Clergy
- Counselors
- Teachers
- University & College resident assistants
- Social Workers
- Other interested individuals

More information on these trainings and other opportunities provided by STOP training committee can be obtained by calling North Dakota Council on Abused Women’s Services at 701-255-6240. STOP Training coordinator is Shelly Carlson at extension 18.
◇ What are the warning signs? Learn to recognize when your partner’s behavior may lead to violence.

◇ What works best to keep you safe? (Even though a person cannot guarantee complete personal safety during an argument, try to avoid the bathroom, kitchen, barn or shop. They are considered to be more dangerous areas to trap you.)

◇ Who can you call in a crisis? Is law enforcement an option?

◇ Teach your children to hide in a safe place or to escape if a violent incident is occurring. Teach them a “code” that will mean to go for help or to call 911 or other emergency numbers.

◇ Where can you run if you need to escape? Do you have family and friends who you can ask for help? Do you have a vehicle, and is it safe for you to drive?

◇ Can you make a set of keys and hide some money in case of an emergency?

◇ Have the following available, or store copies with someone you trust: birth certificates, social security cards, driver’s license and title, checkbook, credit and ATM cards, health records, medication, insurance papers, school records, other important documents, clothing items for children.

◇ In the middle of a violent assault, trust your own judgment. Sometimes you may need to run. Do what works to protect yourself and your children.

◇ If you have left the abusive relationship, take precautions to keep yourself safe. Install a deadbolt lock. Alternate routes when driving. Inform your supervisor at work and your children’s school of your situation. If you have a protection order, keep it with you at all times. If you have a cell phone, keep it turned off when not in use so that the GPS tracking system is turned off.

**Remember**
If you have “last call redial” on your phone, make sure to dial another number after you have completed your call to the domestic violence program or police. Remember that the Internet and e-mail are also possible to monitor.
Immigrants are separated into two groups when discussing whether they are eligible for public benefits.

There are those who fall into the “qualified” category and those who fall into the “not qualified” category. Despite what the names of the groups may suggest, the law excludes most people from both groups from eligibility for many benefits, with a few exceptions.

The “qualified” immigrant category includes:

- Refugees, asylees, conditional entrants, or those granted withholding of deportation/removal;
- Persons granted parole for a period of at least one year by the Dept. of Homeland Security;
- Amerasians, Cuban and Haitian entrants;
- Certain abused immigrants, their children, and/or their parents; and
- Victims of trafficking (not technically in the “qualified” category but granted the same status regarding public benefits).

Those who fall into the “qualified” immigrant category MAY be able to receive public benefits in certain situations. Almost all other immigrants not listed above, including many who are lawfully present in the U.S., fall into the “not qualified” category. The law prohibits “not qualified” immigrants from enrolling in most federal public benefit programs.

Additional rules apply to immigrants who wish to receive Supplemental Security income (SSI). In 1996, two very important laws were enacted. One was regarding welfare and the other regarding immigration reform. The “welfare law” was enacted on August 22, 1996, and immigrant categories are further divided into those who entered the U.S. before that date and those who entered after that date.

Immigrants who entered the U.S. before August 22, 1996:

- If immigrants were getting SSI before this date, they can keep getting SSI without any time limits or deadlines regarding their U.S. citizenship.
- Immigrants who were legally in the U.S. on a permanent basis before that date but were not receiving SSI yet, can get SSI without time limits only if they are now disabled.
- Immigrants who entered before this date cannot receive SSI solely based on their age until they become citizens.

Immigrants who entered the U.S. after August 22, 1996:

- They can get SSI for seven years after the date they arrived in the U.S. Their benefits will be discontinued seven years from the date of their arrival if they have not become U.S. citizens.

In most cases, in order to get Supplemental Security Income, immigrants must be blind or disabled and must have come to the U.S. before August 22, 1996.

As a general rule of thumb, immigrants who qualify to receive public assistance will only be eligible to receive this benefit for seven years after they arrive in the United States.
Halloween Marketing Fun Facts

- The first Halloween celebration in America took place in Anoka, Minnesota in 1921.
- Halloween is the second most commercially successful holiday, beat out only by Christmas.
- Candy Sales in the U.S. for Halloween average $2 billion annually.
- Halloween is the third biggest party day of the year behind New Year’s and Super Bowl Sunday, respectively.
- 86% of Americans decorate their homes at Halloween.
- Halloween is the 8th largest card sending holiday. The first Halloween greeting is dated back to the early 1900’s.

Becoming a U.S Citizen
A Quick Overview

First a person must apply for their permanent residence cards (green cards). If the applicant is not a refugee, a green card application costs $930 plus $80 for the fingerprinting fee ($1,010) per person. A green card application can take one to two years to be processed by the Immigration Service. If the application is approved, an applicant’s status as a permanent resident goes back to the date he or she arrived in the U.S.

A person may apply for citizenship after he or she has been a permanent resident for five years (three years if based on marriage to a U.S. citizen). To become a citizen, applicants must submit an application for naturalization ($595 plus $80 fingerprinting fee); they must be able to speak, read, and write in English; and they must pass a test on U.S. history and civics. There are not many exceptions to the testing requirements – age or illiteracy in their own language will not excuse an applicant from having to take the tests.
The legislature changed the rules for giving the landlord notice that you’re moving out. For years, the rule has been, for month-to-month tenancies, that tenants had to give the landlord 30 days notice in writing. (Landlords also had to give tenants 30 days notice if they wanted to end the month-to-month tenancy.) That meant that if you gave notice on the 21st of the month that you were moving out, you owed rent until the 21st of the next month.

Now the rule is that either party can end the lease with one calendar month’s written notice.

That still sounds like 30 days, but it all depends on when you give notice. If you give notice on June 30 that you’re moving out, you’ve got one calendar month to move out – in this example, it would be until July 31. If you give notice on June 21st, the next calendar month would be July 1 to July 31, so you’d have until July 31 to move out. However, you also have to pay rent until July 31.

This rule applies only if the lease agreement between the landlord and tenant doesn’t say anything different. If the lease says 30 days written notice, then either party can end the lease on 30 days written notice, regardless of what day of the month the notice is given. If the lease says there has to be a longer notice period, like 45 days or 60 days, then there has to be a separate space on the lease for the tenant to initial, to show they know about the longer period. If the separate space is not initialed by the tenant, the notice period is one calendar month.

Another change the legislature made is that if a tenant pays rent after a lease expires, the lease becomes a month-to-month tenancy. For example, if you have a 6 month lease, and it expires and you keep paying rent, the tenancy converts to a month-to-month tenancy. On a lease that converts to a month-to-month tenancy, either party (the landlord or the tenant) can end the tenancy by giving at least one calendar month’s written notice on the last day of a month.

These rules (one calendar month notice and conversion to month to month tenancy) only apply to residential leases. They don’t apply to business or commercial leases, and they don’t apply to leases of farmland or grazing land.

One final change the legislature made concerning landlords and tenants was about pet deposits. The old rule was that landlords could charge a flat $1,500 pet deposit (if they allowed pets at all). Now, landlords can charge either $2,500 or up to two month’s rent, whichever is greater. Even if you’re living in a $350 per month studio apartment, if Fido is living there with you, the landlord can charge a $2,500 pet deposit. Of course, whether to allow pets at all is still up to the landlord.
On March 5, 2007 North Dakota made history when it became the last state in the union to address the issue of whether an individual can appear in court free from physical restraints. The North Dakota Supreme Court in Interest of R.W.S., 2007 ND 37, 728 N.W.2d 326 held a juvenile court has a duty to exercise its discretion when a juvenile requested that his restraints be removed during an adjudication hearing. The Supreme Court found the Juvenile Court violated the minor’s due process right to a fair trial when the referee failed to exercise discretion and instead deferred the decision of whether to handcuff a child to local law enforcement. The Court, though finding a constitutional violation, still upheld the decision of the juvenile court finding the violation to be harmless error because of overwhelming evidence of guilt.

The North Dakota Supreme Court extended its holding of Interest of R.W.S. to apply to adults in the case of State v. Kunze, ND 143 2007, 738 N.W.2d 472. The Supreme Court in Kunze upheld a conviction of an adult tried in restraints by acknowledging R.W.S. was not yet available for guidance when Mr. Kunze was tried but the Court at paragraph 24 and 25 set out specific mandates for the use of restraints in future cases. The North Dakota Supreme Court is now requiring a court to “make case-specific findings and explain on the record its rational for the restraints even in those instances where the Court believes the reasons are apparent on the record.” The Supreme Court also directed future courts to include the reason for not accommodating a request for one type of restraint over another.

LSND had the privilege of handling the R.W.S. from its beginning. When LSND was deciding whether to take the case up on appeal we knew it was a case of first impression. We knew from our research there had been only a couple of national decisions involving shackling of juveniles. We weren’t sure whether an appeal would be successful. However, thanks to a very dedicated Bismarck Office and an exceptional summer law clerk, we decided to proceed with the case. When the Supreme Court waived oral argument we thought we were sunk, but when a decision was not issued for several months we speculated something significant was on the way. Yes, we were disappointed the court did not reverse R.W.S.’ conviction, but the national attention this case has brought to the issue of restraining children has transcended well beyond R.W.S.

Shortly after the R.W.S. decision came down, we received congratulations from the National Juvenile Defender Center. LSND has been asked by numerous juvenile attorneys throughout the United States for technical assistance. The USA TODAY newspaper ran as its June 18, 2007 Cover Story an article on the use of chains in juveniles courts. The Cover Story mentioned how in March, the North Dakota Supreme Court found the handcuffing of a child to be unconstitutional. Because of LSND’s success with R.W.S. and the growing nationwide movement, the National Juvenile Defender Center has invited LSND to do a presentation at its National Summit in October.

From a personal standpoint, what makes the R.W.S. case extra special is 2007 marks the 40th Anniversary of In Re Gault. In Re Gault required the Bill of Rights to apply to children. Without In Re Gault, there would not be an R.W.S.
Call our Senior Legal Hotline **Toll-Free**, Monday through Friday 8 a.m.—5 p.m. Central Time. If you prefer, you may also leave a message and one of our legal staff members will return your call.

When you call on legal matters, an intake worker will ask you a few questions, which are asked to determine which of our grants will pay for the services we may provide you. Everything you say is **strictly confidential**.

You may receive advice right away. If you need more then advice, LSND may also work on your case. If LSND cannot assist you, a referral may be made to another organization that might be able to help you. Seniors have telephone access to senior legal services programs provided by LSND, the State Bar Association of North Dakota (SBAND), and the University of North Dakota School of Law Clinic Education Program through one simple toll-free number.

**If you are 60 or older or assisting someone who is 60 or older with a legal question, legal problem, or need directions on where to find legal help, Call Monday through Friday 8 a.m.—5 p.m. Central Time. 1-866-621-9886**

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**Halloween History**

- Halloween, referred to as All Hallows Eve, was originally a pagan holiday in which they honored the dead. It was celebrated on October 31 since this was the last day of the Celtic calendar. The celebration dates back some 2,000 years.

- The ancient Celts thought that spirits and ghosts wondered the streets on All Hallows Eve so they began wearing masks and costumes in order to not be recognized as humans.

- On Halloween, Irish peasants would beg the rich for food. For those that refused, they would play a practical joke. So, in an effort to avoid being ticked, the rich would hand out cookies, candy and fruit, a practice that morphed into trick-or-treating today.
North Dakota, like most other states and the federal government, has certain rules regarding the employer/employee relationship. In North Dakota the rules fall under the general heading of “Human Rights.” Fundamentally, North Dakota has a policy against discrimination on the basis of race, color, religion, sex, national origin, age, physical or mental disability, and marital status. This is generally contained in North Dakota Century Code Chapter 14-02.4. This general provision comes from similar federal laws and applies not only in employment situations but also in several other areas. For purposes of this short article I will concentrate on the employer-employee relationship.

Most employment protections come from the United States Constitution. This, of course, means that any violation of the rights of an employee is, arguably, a Constitutional claim at its very core. North Dakota has included in our State’s Constitution a specific list of individual rights including our freedom of religion, freedom of press, freedom of assembly, and the freedom of employment.

These protections, with their origin in the United States and the North Dakota Constitutions, have been subsequently woven into the fabric of employment rights. Several areas exist in federal law which protect different classes of individuals. In North Dakota, the classes of employees protected from discrimination are listed in chapter 14-02.4. Although other N.D. statutes can affect employment discrimination, chapter 14-02.4 is the primary law that should be looked to for all claims under North Dakota concerning whether an individual is protected from discrimination, and also whether an employer would be violating the law if the protected class were treated differently. These laws are non-negotiable, that is, they cannot be contracted away.

The question then turns to what exactly is discrimination. How can an employer determine whether a specific action is discrimination? Or, put another way, how can an employee tell whether or not they have been discriminated against? Discrimination is not necessarily merely the obvious. Clearly, a discriminatory situation exists where an employer uses derogatory language toward a member of a different race, sexual language toward someone of the opposite sex, or religiously intolerant language toward someone of a different religion. However, discrimination can also exist in much more subtle forms in the workplace.

The United States Supreme Court has generally set out two types of discriminatory practices. The first is practices which constitute different treatment. The second is where the employer initiates a program which appears to be neutral but nonetheless results in unintended discrimination against a protected class of employees. The first classification is generally termed “disparate treatment” and usually is based on the intent of the employer’s practices. The second classification, termed “disparate impact,” usually focuses on results rather than intent.

The general test for disparate treatment has 4 steps: (1) that the person was the member of a qualified group; (2) that the person applied for and was qualified for a job (promotion, etc.) for which the employer was seeking applicants; (3) that the person was rejected; and (4) that the position remained open.

(Continued on page 14)
(Employment Discrimination Continued from page 13)

Though there are no hard and fast rules for when a practice by an employer is disparate treatment, some things are obvious. The use of derogatory, or even slang language can be discriminatory. Sexual innuendo and, obviously, language that is sexually charged is usually discrimination. As an employer, the important thing to remember is to be sensitive to different types of people, races, religions, and even nationalities of those who are working for you. As an employee, it is important to remember that comments, practices, or behavior based on race, sex and mental or physical condition are inappropriate in an employment setting.

Disparate impact cases are much more difficult to quantify. While the concept may seem simple, most cases involving disparate impact deal in statistical analysis of when an employer practice is discrimination. Even the Equal Employment Opportunity Commission’s guidelines on disparate impact are based on statistics. One approach for an employer is to ensure that there is a business justification for the employment practice that is being challenged, and that the practice itself can be changed or eliminated if need be.

Illegal discrimination in most forms is a complex and difficult issue to quantify. However it is certainly one that both the employer and the employee must be aware of. This short article is not even the tip of the proverbial discrimination “ice-berg”; nonetheless it may help explain rights and liabilities for both employers and employees. If you think that you may have a discrimination issue at your place of business, either as an employee or an employer, the best course of action is to contact the EEOC at www.eeoc.gov or contact an attorney and discuss that issue with them.
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