

# Employment Litigation Victory on Behalf of Our Client, Elite Protection & Security, Ltd.

by Rachel E.A. Atterberry

## A FREEBORN & PETERS LITIGATION VICTORY

Elite Protection & Security, Ltd., won a significant victory in its defense of a Title VII discrimination claim filed by a former employee. The case (*Schwingel v. Elite Protection & Security, Ltd.*, Case No. 1:2011cv08712) was thrown out on summary judgment by the U.S. District Court for the Northern District of Illinois.

David Schwingel worked for Elite, operating as a security cargo screener at the DHL facility at O'Hare International Airport. Although Schwingel is a Messianic Jew, he did not discuss his religious beliefs with his employer, with the exception of requesting that he work a schedule Monday through Friday. Elite readily granted that request.

After chairs were removed from the security screening stations, Schwingel took it upon himself to build his own chair out of garbage found outside of the facility. On the chair, he placed a cardboard sign declaring that the seat was a "Men Only" chair and that "No women are to sit here during the days of their monthly cycle."

Shortly thereafter, a female employee attempted to use the chair, much to Schwingel's chagrin. An altercation followed wherein Schwingel verbally insulted his co-worker. The female employee reported Schwingel's behavior and actions to management, writing that Schwingel told her that "women are defiled by God under Mosaic Law" and that "all women are unnaturally clean because of menstruation and that [women] can never be trusted to honestly disclose whether or not [they] are menstruating." She stated that she was offended and felt harassed by Schwingel's actions.

Elite investigated the complaint and determined that Schwingel's conduct was disrupting the workplace and that he had harassed the employee because of her gender, making his conduct discriminatory. Concerned that such behavior would continue, distracting Elite employees and DHL or causing them to be targeted as well, Elite decided to terminate Schwingel.

Schwingel then filed a Title VII claim against Elite, alleging that the company discriminated against him on account of his religion and failed to accommodate his religious beliefs.

The Court determined that Schwingel had created an "offensive environment for women" and violated Elite's non-discrimination policy and code of ethics. Thus, the Court granted summary judgment in Elite's favor and dismissed the discrimination claim, as it was clear it fired Schwingel for policy violations. As for the failure to accommodate claim, the Court determined that Schwingel had disavowed and abandoned his claim during his deposition, in which he stated that the company did accommodate his request to take the Sabbath off and that he did not request any other accommodations.

The matter was handled by Rachel Atterberry and Jennifer Huelskamp.