

*Monthly Memo*

**NOT ALLOWING AN EMPLOYEE TO GO  
TO THE RESTROOM CAN BE EXPENSIVE!**

A Ms. A.M. filed a lawsuit which was heard on appeal by a California Appellate Court in the case of *A.M. v. Albertsons, LLC*. A.M. had worked for Albertsons' grocery store since 1987. In January 2003, A.M. was off work on medical leave because she had been diagnosed with cancer of the tonsils and larynx. She underwent surgery and began taking medication which left her mouth very dry. "To counter this, A.M. had to constantly drink water. As a result of the large volumes of water she consumed, she would have to go to the bathroom to urinate frequently."

Although Albertsons did not allow employees to have drinks at the checkout counters, the store made an exception for A.M. In response to the drinking, however, A.M. had to go to the restroom frequently. The store accommodated her in allowing her to use the restroom. She gave notice to a supervisor and a replacement employee would be assigned to take A.M.'s job.

A year later, A.M. had transferred to work at a different Albertsons' store. One evening, there were only three employees on duty including the manager. "Albertson's policy was that a checker could never leave the front end of the store unattended." Ms. Sampson, the store manager for that shift, was not aware of A.M.'s medical problem. A.M. asked the manger if she could take a break. Ms. Sampson said a truck was about to make a delivery and she asked A.M. if she could wait. A.M. said, "Yes." However, there were further delays and eventually A.M., who was also on her menstrual cycle, urinated at the checkstand. A.M. subsequently suffered very strong emotional and mental upsets and distress. A lawsuit was filed by A.M. claiming she had not been accommodated for her disability, which subsequently brought on major depression and other disabling events.

Albertsons responded to the lawsuit by explaining they had accommodated A.M. at all times prior to the one incident and that this was only one incident. A jury trial found in favor of A.M. The Appellate Court found the jury verdict was correct. ". . . Albertsons knew A.M. had a physical condition that limited a major life activity; it failed to provide reasonable accommodation for that condition on February 11, 2005; and that failure was a substantial factor in causing harm to A.M. The jury awarded A.M. \$200,000.00" and the Appellate Court stated, ". . . we infer that it (the jury) found the failure to accommodate to be substantial."