

DECEMBER 15, 2009

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**FINANCIAL INSTITUTIONS**

**California – December 1, 2009. Borrowers Losing Battle Arguing Loan Modification Required Under TARP.** In a move to gain an advantage in an otherwise unfavorable forum, borrowers are increasingly seeking to derail foreclosures claiming a lender has a duty to modify the loan under federal bailout legislation. However, initial rulings indicate that the courts are not receptive to the argument that the financial institution had a duty to modify the loan as a recipient of funds from the federal Troubled Asset Relief Program (TARP). The court could not reconcile the assertion that the receipt of TARP funds gives rise to a cause of action against the recipient by a borrower.

*Clemens v. J.P. Morgan Chase Nat. Corporate Services, Inc.*, 2009 WL 4507742 (N.D.Cal.).

**EPL- LABOR & EMPLOYMENT**

**Tenth Circuit – Colorado – December 7, 2009. Federal Court Further Expands Scope of Adverse Actions.** A woman in a management position at United Airlines was presented with two options by her employer – either relocate to another state in a part-time non-management position or resign from the company. The court concluded that forcing a management employee with a successful performance record to choose between resigning and relocating across several states to continue her employment in a part-time and non-management capacity effectively changed her employment status. Compelling an employee to choose between two undesirable options that would significantly and immediately alter her compensation, terms, conditions, and privileges of employment could serve as the basis for a discrimination claim.

*Barone v. United Airlines*, 2009 WL 4547800 (C.A.10 (Colo.))

**Ninth Circuit – Colorado – November 19, 2009. Federal Court Split Widens on Rights of Independent Contractors to Sue for Discrimination.** In a recent decision the court ruled that a doctor whose contract was terminated after a hospital learned of his sickle cell anemia can sue under the Rehabilitation Act. Although the anesthesiologist was an independent contractor and not an employee, he was not foreclosed from asserting disability discrimination claim under Rehabilitation Act against the medical center for refusing to accommodate his operating room and call schedules due to his sickle cell anemia. The Act's protection is not limited to employers and employees as defined by the ADA, but also applies to independent contractors and the entities that hire them.

*Fleming v. Yuma Regional Medical Center*, --- F.3d ----, 2009 WL 3856926 (C.A.9 (Ariz.))