S suit has AIDS ramifications

By DON LEWIS
Advocate state writer

NEW ORLEANS — A case pending before the U.S. Supreme Court could result in gays being made a protected class under the law and prohibit employers from firing homosexuals with AIDS, two labor lawyers said here Tuesday.

Laurence E. Baccini of Philadelphia and David Israel of New Orleans said the case — Arline vs. School Board of Nassau County — hinges on whether the high court eventually interprets the 1973 federal Vocational Rehabilitation Act.

Under the law, employers cannot fire the handicapped because of their disability and are required to promote through their work force people who are defined as handicapped, the attorneys said.

According to Israel and Baccini, the act places obligations on two types of employers:

• Organizations that receive direct federal grants.
• Organizations that maintain government contracts of $2,500 or more.

Israel said, "The issue hasn't been conclusively decided as to whether or not AIDS will be a handicap as defined under that law.

"What the question comes down to is whether or not someone with AIDS or an AIDS-related problem would be so classified," he said.

Arlene vs. School Board of Nassau County was brought by a schoolteacher who, in a two-year period, had three relapses of infectious tuberculosis.

"After the third one, she was discharged by the school district because they had an obligation to keep their children well," Israel said.

"The question is whether tuberculosis is to be covered or protected for purposes of the federal Vocational Rehabilitation Act," Israel said.

"And theoretically — and remember we're just talking theoretically here — any time they use the term tuberculosis you could substitute AIDS or AIDS-related complex," he said.

Baccini said, "If the Supreme Court rules in the Arline case that a communicable disease in the broad sense is a handicap within the meaning of the federal Vocational Rehabilitation Act, that will mean that employers who do business with the federal government will be prohibited from discharging people who have communicable diseases.

"And the idea is that since AIDS is a communicable disease, that decision may — but not necessarily — apply to that affliction as well," he said.

Acquired Immune Deficiency Syndrome is primarily a sexually transmitted disease that is thought to be invariably fatal.

After destroying a victim's immune system, AIDS leaves the body open for many different kinds of diseases.

High-risk groups include homosexuals and bisexual men.

Baccini and Israel, both specialists in labor law representing management interests, were interviewed at the New Orleans Convention Center during the 38th annual conference of the American Society for Personnel Administration.

During the conference, the two attorneys conducted seminars on "AIDS in the Workplace," an area where no guiding legal precedents have been set.

Baccini said he believes AIDS in the workplace is going to become an important issue because the incidence of reported cases has been increasing dramatically in the last couple of years.

In the Arline case, after being fired the schoolteacher filed a lawsuit in federal court under the federal Vocational Rehabilitation Act because the school district had received federal grant money to support its lunch program, Israel said.

The litigant alleged the school board had two obligations:

• To accommodate to her condition by assigning her duties that would have taken her away from children during the time she was communicable.
• Not to discharge her.

Said Baccini, "The trial court bought those two defenses. And then the school board appealed to the court of appeals in Atlanta."

He said the appeals court ruled that "the school board did have an obligation to accommodate to her handicap to the work situation and, most importantly, concluded that tuberculosis was a handicap within the meaning of the federal statute."

Israel said that if AIDS is determined to be a handicap under the federal Vocational Rehabilitation Act, then "a whole new protected class of people arise."

He explained that "any time a gay person is not hired, then he could claim that the reason he was refused employment or denied a promotion or discharged was not because he's gay, but because of the employer's irrational fear that he has AIDS or AIDS-related complex."

"And," Israel said, "if that becomes protected, then you've all of a sudden backed into this new protected class of individuals."

Baccini said all of the medical evidence to date suggests that people who have AIDS do not transmit the disease to others in the course of normal contact in the workplace.

"What gives rise to the transmission of AIDS is intimate sexual contact," Baccini said. "And since that doesn't usually occur or ought not to occur in the workplace, then there is no risk that the disease would be communicable."

Israel said the key to dealing with the problem of AIDS in the workplace is education.

"You have got to inform people and attempt to remove this truly irrational fear regarding the issue of communicability," Israel said.

"If you can effectively remove this irrational fear, then the issue as to whether or not the employment applicant with AIDS or the probationary employee with AIDS or the employee with AIDS should be hired or should be permitted to stay or should be fired becomes a non-issue," Israel said.

The American Society for Personnel Administration conference, which attracted more than 2,500 human resource professionals, ends Wednesday with a luncheon.