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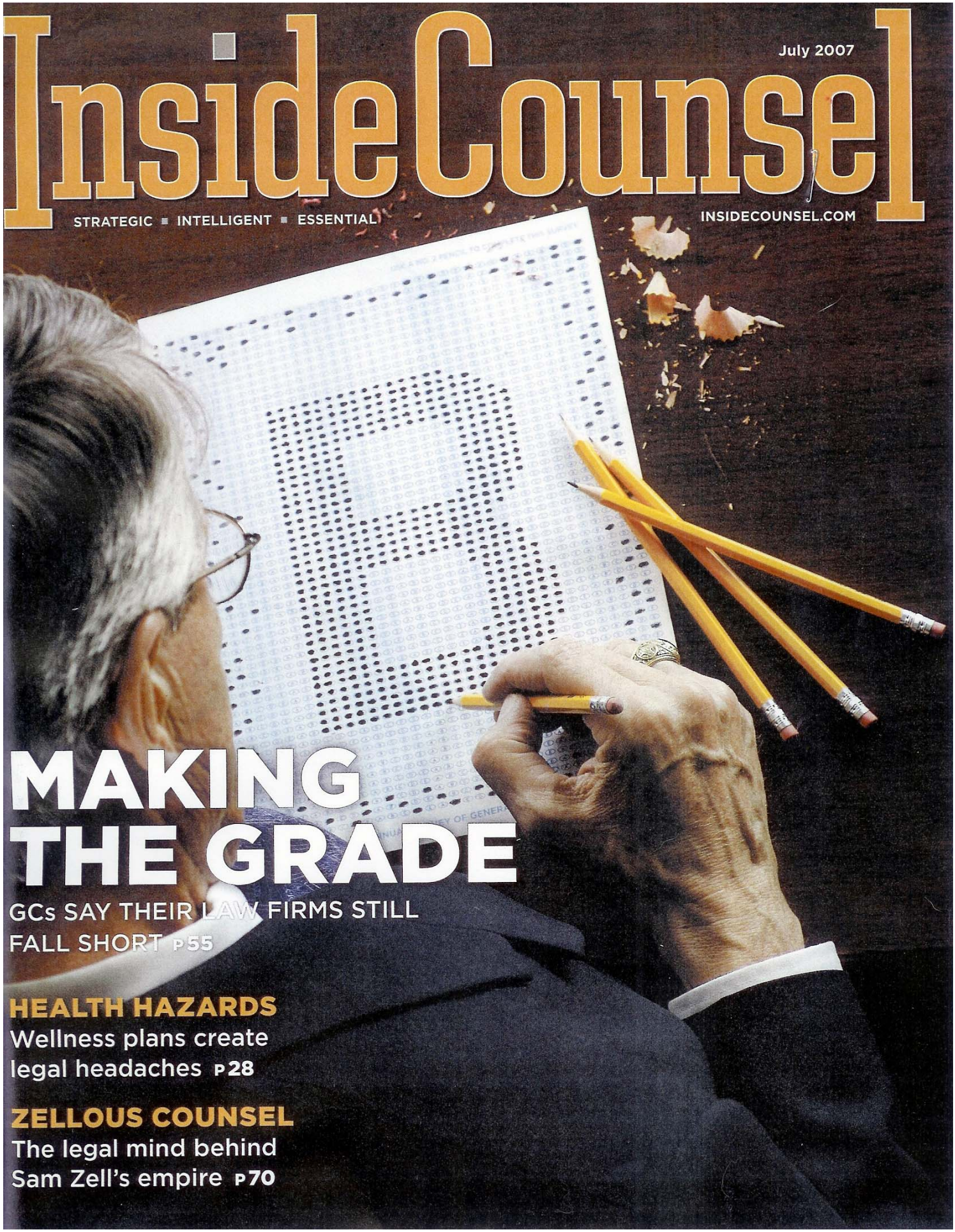

MAKING THE GRADE

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Changing Times

A more diverse workforce requires employers to rethink their training programs.

BY LAURIE N. ROBINSON

Bob Dylan recorded "The Times They Are A-Changin" more than four decades ago. To some, the song was a reflection of the change in American culture. Undoubtedly, it highlighted the one inevitable fact of life: things change, and people have to acclimate. Nowhere is that truer than in the American workplace. ¶ When Dylan recorded his famous song, the workforce was predominately Caucasian male, with few women and minorities in professional roles. By contrast, today's workforce has evolved into a melting pot of people from different minority groups, religious backgrounds, cultures, generations and genders. Companies with diverse employee populations gain an edge on marketplace competition and maximize profits through marketing strategies to reach a broad consumer base. Furthermore, the legal landscape has expanded to provide equal employment opportunity for individuals in protected classes, including but not limited to, race, color, religion, sex, national origin, age, disability and now, in certain states, sexual orientation and transgender status.

A major consequence of this expansion has been an increase in employment-related claims. The EEOC's charge statistics reveal that during 2006, employees filed 75,768 charges of discrimination—up by 340 claims over 2005. Therefore, companies have to take proactive steps to prevent and defend claims of employment discrimination.

In the 1998 decisions *Burlington Industries Inc. v. Ellerth* and *Faragher v. City of Boca Raton*, the Supreme Court established affirmative defenses for employers defending hostile work environment claims. The Court held the employer is automatically liable if a supervisor's harassing misconduct culminates in a tangible employment action (e.g., dismissal or denial of a promotion).

Alternatively, when a supervisor's harassing misconduct does not cause tangible job-related harm to the employee, the employer can avoid liability or reduce damages if it proves: "(a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise."

Moreover, in *Kolstad v. American Dental Association*, the Supreme Court recognized that an employer may not be held vicariously liable "for the discriminatory employment decisions of managerial agents where these decisions are contrary to the employer's good-faith efforts to comply with Title VII."

In addition to understanding affirmative defenses, employers also must implement effective training programs to ensure employees know their duties under the law. Companies should adopt a comprehensive policy that addresses all forms of illegal harassment and discrimination. Companies also should have in place several avenues for employees to report complaints of unlawful conduct.

In addition to policies and complaint procedures, companies should implement training initiatives to help minimize liability, costs and unfavorable exposure. Ongoing training not only educates workers on their duties and responsibilities, but also sends the message that the company has zero tolerance for unlawful conduct. Such training should be interactive and clear enough for laypersons to understand.

Finally, as a practical matter, as the workplace becomes more global, companies should include multilingual and cross-culture training.

In the end, anti-discrimination, anti-harassment and anti-retaliation training promotes a work climate that is respectful of all workers and improves staff morale and satisfaction. Furthermore, such training coupled with a comprehensive complaint procedure makes the company proactive and not reactive in preventing unlawful conduct, mitigating risks and establishing affirmative defenses.

LAURIE N. ROBINSON *is an assistant general counsel for CBS Broadcasting Inc., director of CBS Training and Development and founder and CEO of Corporate Counsel Women of Color.*