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EEOC Charge Must Be Filed Under Oath

In Vason v. City of Montgomery, Alabama (1/29/2001) the U.S. Court of Appeals for the Eleventh Circuit affirmed the trial court's dismissal of a former employee's race and sex discrimination claims under Title VII on the ground that she failed to file her charge with the U.S. Equal Employment Opportunity Commission under oath. Jo Ann Vason was a nurse/matron working for the Montgomery Police Department Municipal Jail. The Department implemented a weight management program and, although initially exempt, Vason subsequently was suspended for violating the program. She later retired.

Vason wrote to the EEOC complaining of race and sex discrimination, alleging that the Department had a pattern and practice of exempting white males from the weight program. She received a right-to-sue letter and filed a federal lawsuit.

Noting that Vason's charge was not made under oath or affirmation as required by Title VII, the trial court dismissed her claim. Vason argued that the EEOC waived that requirement

when it processed her unverified charge and issued her a right-to-sue letter. Nevertheless, the court agreed with other courts ruling that the verification requirement for EEOC charges was mandatory.

Loser Pays Provisions of Arbitration Agreement are Enforceable

Jeffrey Goodman was employed as president of ESPE America, Inc. Before he was hired, Goodman signed an employment contract containing a provision requiring arbitration of any employment dispute. He was terminated and filed an action in federal court alleging violation of Title VII. Relying on the arbitration provision, ESPE filed a motion to compel arbitration of the dispute.

In Goodman v. ESPE America, Inc. (1/30/2001) the U.S. District Court for the Eastern District of Pennsylvania dismissed the lawsuit finding that Goodman must arbitrate his dispute. Relying upon a series of cases invalidating arbitration agreements where an employee is required to pay up front one-half of expenses, Goodman claimed that the provision requiring that the loser must pay attorney's fees denied him his substantive right to an effective and accessible legal forum. The court noted, however, that Goodman did not allege that he was unable to pay and further noted that, as president, he earned a substantial salary and a substantial termination payment. The court also distinguished those cases requiring up-front payment of costs before arbitration or the splitting of costs at the conclusion of the case. The court explained that, by its terms, the arbitration provision suggests that Goodman would not be liable for any costs at any time if his claim were successful. The court determined that, while the potential of having to pay costs and attorney's fees if unsuccessful may deter some plaintiffs from bringing marginal employment cases, it was far less a deterrence than ordinary fee-splitting arrangements or the large initial deposits involved in other cases.

Summary Plan Descriptions Must Be Accurate

In Layaou v. Xerox Corporation (1/18/2001) the U.S. Court of Appeals for the Second Circuit reminded employers of the importance of providing an accurate summary plan description for retirement plans. In this case, the Second Circuit vacated the trial court's grant of summary judgment, finding that Xerox's SPD for its retirement plan violated ERISA because it did not accurately describe the calculation of benefits for individuals who received prior lump-sum distributions.

John Layaou received a lump-sum distribution of retirement benefits when he voluntarily left Xerox. A few years later, he was rehired but was laid off seven years later as part of a reduction-in-force. Xerox gave the SPD to Layaou and sent him an annual estimate of benefits. Although the estimate of benefits stated that Layaou would receive substantial amounts monthly, depending on the specific formula used, ultimately the plan administrator informed him that he would receive a retirement benefit of only $145 per month. The

district court granted summary judgment for Xerox on the ground that the plan administrator did not abuse its discretion in administering the terms of the retirement plan.

On appeal, however, the Second Circuit noted that ERISA requires that the SPD be sufficiently accurate and comprehensive to inform participants of their rights under the plan. The court found that the SPD failed to provide notice to Layaou and other employees that their future benefits would be offset by an appreciated value of their prior lump-sum benefit distributions. Although the SPD provided that the amount received by retirees may be reduced, the SPD did not mention the term “phantom account,” describe the phantom account offset concept, or even indicate that the offset would include an appreciated value of the prior-lump distribution. The court also found that the confusion over benefits was compounded by the individualized yearly calculations of estimated benefits Xerox sent to employees. Accordingly, the Second Circuit returned the case to the district court to determine the damages caused by the inaccurate SPD and how the decision would affect other similarly-situated employees.

Subjective Standards May Support ADEA Claim

Arturo Medina worked at Ramsey Steel Company as a detailer preparing shop drawings for steel components. At age 45, Medina applied for an outside sales position, but Ramsey Steel awarded the job to a man 25 years younger. About nine years later, Medina again applied for an outside sales position, but the president of Ramsey Steel told him that he did not have the right “ingredients” for the job. The position remained open for several years until another man 25 years younger was finally hired. At about that time, Medina was interested in a lead detailer position. However, Ramsey Steel promoted a coworker who said the company should “get rid of all the old people.” After being passed over, Medina began complaining about age discrimination. Prior to his complaining, his personnel record contained only one complaint in over 20 years of working for Ramsey Steel. Within the next few months, officers of the company placed between eight and ten complaints in his file and within months he was placed on probation.

Medina filed a complaint with the U.S. Equal Employment Opportunity Commission. At a meeting two months later, an officer of Ramsey Steel told him, “I don’t care if you have been with the company five years or fifty years. And I don’t care if you sue me or take me to court. It’s going to be hard for you to collect.” The following month Medina was terminated.

Medina filed a claim under the federal Age Discrimination in Employment Act. The district court granted summary judgment for Ramsey Steel on Medina’s failure to promote and retaliation claims.

In Medina v. Ramsey Steel Company, Inc. (1/31/2001) the U.S. Court of Appeals for the Fifth Circuit reversed and remanded the case for trial. The appellate court ruled that Ramsey Steel could not rely on its subjective standards to judge employee qualifications and then plead lack of qualifications when its promotion process is challenged as discriminatory. The

court pointed out that whether Medina had the right "ingredients" was a question of fact for a jury. Because Medina had substantial sales experience in his background and had more sales and industry experience than the younger individual promoted over him, Medina raised a question for the jury about whether he was discriminated against on the basis of his age. The court also ruled that the sharp increase in complaints after Medina filed his discrimination claim suggested that Ramsey Steel retaliated against him for complaining about age discrimination.

Court Discusses How to Calculate Damages for Breach of Stock Option Agreement

Mark Scully declined to enter into a written contract and instead entered into an oral employment agreement with US WATS, a Pennsylvania telecommunications company, for a two-year term as president. As part of the employment agreement, US WATS granted Scully an option to purchase 850,000 shares of restricted stock vesting over a two-year period. Although the plan provided that all options would extinguish upon termination of employment, during Scully's term the plan was amended to provide that options would extinguish thirty days after termination. Before the end of the two-year term, US WATS terminated Scully's employment without warning.

Within thirty days following his termination, Scully attempted to exercise his option to purchase the 600,000 shares that had vested by that date. US WATS refused to honor the option, claiming that the options automatically expired at the time of his termination.

Scully sued US WATS and three of its officers and directors for a breach of contract, conspiracy, fraudulent and negligent misrepresentation, and violation of Pennsylvania's wage payment law. After a two-day trial, the trial court awarded Scully damages of more than $626,000 representing the value of the stock options, lost wages and interest.

In Scully v. US WATS, Inc. (2/1/2001) the U.S. Court of Appeals for the Third Circuit affirmed the calculation of damages for the stock options. The court measured the damages based on the difference between Scully's exercise price and the market price of the shares on the day he sought to exercise his options. The court applied that calculation to the total 850,000 shares under the employment agreement rather than only to the 600,000 shares that had vested by that date, reasoning that absent Scully's wrongful termination he would have fully exercised his option after all shares had vested. Scully had argued that the damages should have been calculated at the end of the restricted periods because, only at that time, could he have sold all of the shares of stock. The court surmised that hindsight played a role, noting that, because US WATS' stock had increased significantly over that time, Scully would have received damages of over $1,000,000. US WATS had argued for a 30% discount on the value to reflect the fact that the shares were not freely marketable as a result of the restriction. The court's calculation avoided speculation and hindsight problems.

Punitive Damages Claim Should Go To The Jury

Mark Bruso worked as a supervisor for United Airlines at O'Hare International Airport in Chicago. Bruso complained to his manager about aggressive and inappropriate behavior of another supervisor, Kevin Sporer, who was not well liked, was known to have a short temper, and was known to scream and swear at female employees. Bruso's manager requested written statements from employees who had witnessed Sporer's alleged misconduct. Bruso's manager removed Sporer from his duties and placed a formal reprimand in Bruso's personnel file. Bruso, who never before received a reprimand, gave a longer account of problems with Sporer. United commissioned a team to investigate the allegations. During the investigation, Bruso was suspended with pay. The witnesses contacted by the investigation team essentially confirmed Bruso's allegations. However, Bruso informed the investigation team that it was not his intention to accuse Sporer of sexual harassment which is how the team characterized his allegations. The investigation team concluded that Bruso had merely tried to justify his actions rather than accuse Sporer of sexual harassment.

Bruso's manager, however, concluded that Bruso either falsely accused Sporer of sexual harassment or had failed to report the inappropriate conduct in a timely manner. Accordingly, the manager demoted Bruso.

Bruso filed a lawsuit claiming that United violated Title VII by demoting him in retaliation for reporting Sporer's sexual harassment. United adopted the manager's position by defending on the grounds that it demoted Bruso because he either falsely accused Sporer of sexual harassment in order to justify and avoid his reprimand or, in the alternative, he put United at risk by failing to report the inappropriate conduct in a timely manner. A jury awarded Bruso $10,000 and attorneys' fees of more than $390,000. The court refused to submit Bruso's claim for punitive damages to the jury on the grounds that there was no evidence that United was indifferent to his federally protected rights.

In Bruso v. United Airlines, Inc. (2/2/2001) the U.S. Court of Appeals for the Seventh Circuit ruled that the district court erred by not submitting the claim for punitive damages to the jury. Although United had a formal non-discrimination policy and educated its employees about the policy, Bruso introduced evidence at trial suggesting that United's management disregarded the policy by refusing to respond timely to Sporer's harassment even though they knew about it. Bruso introduced additional evidence suggesting that the investigation into Sporer's conduct was a sham designed to discredit Bruso and to protect the managers who should have taken prompt and remedial action to correct the harassment. Accordingly, the court granted Bruso a new trial.

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