ROBINSON & COLE LLP
LABOR, EMPLOYMENT AND BENEFITS

eNews

E-news is an electronic newsletter reporting recent developments in labor, employment and benefits law.

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Congress Votes to Repeal OSHA's Ergonomics Standard

The House and Senate both have approved a resolution to rescind the controversial ergonomics standard issued by the U.S. Occupational Safety and Health Administration that went into effect in January. Compliance with the standard was to begin in October 2001. The votes were largely along party lines. The Senate voted 56-44 to rescind the standard, with 6 Democrats joining the Republicans. In the House, 16 Democrats joined the Republicans for a vote of 223-206. President Bush is expected to sign the resolution. Bush's signature would result in the repeal of the ergonomics standard.

Temporary Workers May Bring a Discrimination Claim under Title VII

In Lyles v. Alamo Rent-a-Car, Inc. (2/14/2001), a federal court in Maryland held that a temporary worker may file a discrimination claim under Title VII against the company where he was placed. A temporary employment agency placed Lyles, an African-American,

with Alamo where he worked as a car shuttler. A manager at Alamo, who was White, told Lyles that, due to his unsatisfactory job performance, he would no longer be needed. Like many temporary workers, Lyles had been paid by the agency, not Alamo, and the agency had placed him in his positions with Alamo and another company.

Following his dismissal, Lyles sued both Alamo and the temporary employment agency, alleging race discrimination in violation of Title VII. Title VII requires the existence of an employment relationship. In deciding whether Lyles could maintain an employment discrimination claim against Alamo, the court refused to conclude that Alamo was not Lyles' employer. The court noted that there were many factors to consider, including the permanence of the relationship between Lyles and Alamo, Alamo's power to hire or fire Lyles, its power to control Lyles' conduct on the job, and whether Lyles' work was part of the regular business of Alamo. In light of these factors, the court refused to dismiss the claim on that basis, finding there to be a sufficient question of fact on the issue of employment status. Nevertheless, the court dismissed Lyles' claim because he failed to offer any proof that Alamo discriminated against him.

Frequent Racial Epithets by Supervisor May Be Harassment

In Spriggs v. Diamond Auto Glass (2/22/2001) the U.S. Court of Appeals for the Fourth Circuit held that an African-American customer services representative could proceed with racial harassment claims based on his supervisor's conduct. Spriggs alleged that he was subjected to daily racial harassment by his Caucasian supervisor and that Diamond failed to take appropriate corrective measures. The supervisor inflicted derogatory racial comments almost daily and placed a picture of a monkey in a manual regularly used by Spriggs. A lower court ruled in favor of Diamond. In reversing the lower court's decision, the appellate court explained that a reasonable jury could find that the supervisor's conduct created a hostile environment and that Diamond failed to correct the supervisor's actions.

Supreme Court Declines to Review Ruling that Airline's Policy Setting Weight Limits for Flight Attendants was Biased

The U.S. Supreme Court declined to review the Ninth Circuit's decision in Frank v. United Airlines, Inc. (6/21/2000), in which a United Airlines policy that imposed weight requirements for its flight attendants was found to be "facially discriminatory." Pursuant to the policy, which was in effect between 1980 and 1994, United Airlines required flight attendants to comply with maximum weight requirements, based on sex, height and age. For example, the maximum weight for a 5'7" 30 year old female was 142 pounds. The maximum weight for a male of the same height and age was 161 pounds.

A number of female flight attendants who had been disciplined or terminated for failing to meet the weight requirement filed a class action lawsuit, claiming that the policy unfairly discriminated against employees on the basis of gender and age. The Ninth Circuit allowed the flight attendants to proceed on the age component of their claim, and ruled in their favor

on their gender claim. The basis for the court's decision on the gender discrimination claim was not that the policy establisheddifferent weights for men and women; instead, the policy established weight limits based on different "body types" for men and women, thereby adversely affecting women. Generally, the male weight limits were based on figures from an insurance company's large body frame scale, while the female weight limits were based on medium body frame scale. The court noted that United Airlines did not offer any evidence to show that the weight standard was a bona fide occupational qualification and also noted that the standard was not simply an appearance standard (i.e., a standard lawfully imposing different but essentially equal burdens on men and women, such as different hair length or different dress standards).

Court Dismisses "Personal Appearance" Race Claim by African-American Employee

In McManus v. MCI Communications Corp. (4/13/2000), McManus, an African-American, sued MCI alleging that she was discharged based on a combination of race and personal appearance. Although McManus was replaced by successive African-American workers, she claimed that she was treated differently because she displayed her heritage through her clothing and hairstyle in contrast to her replacements who dressed in clothes more typically reflective of corporate America. McManus often came to work in African-styled attire and wore her hair with dreadlocks, braids, twists or cornrows. As evidence of discriminatory animus, McManus cited comments made to her during her employment by MCI managers such as: "That is a pretty outfit" and "Oh, you have a new hairstyle, I like your hair." The District of Columbia Court of Appeals, however, dismissed McManus' claims, concluding that while there may be circumstances where a claim of discrimination would be legally cognizable, McManus did not proffer facts to support her claim. The court noted that the alleged comments were complimentary in nature and were not made by individuals responsible for McManus' discharge.

No Invasion of Privacy Claim by Sexual Assault Victim where Company Showed Surveillance Video of the Assault to a Limited Number of Individuals Involved in the Investigation

In Shattuck-Owen v. Snowbird Corp. (12/5/2000), the Supreme Court of Utah dismissed an invasion of privacy claim brought by the victim of a sexual assault against her employer. Shattuck-Owen worked as a server in Snowbird's banquet department. She was sexually assaulted by an unidentified male while at work and the assault was captured by Snowbird's surveillance cameras. After the incident, Snowbird immediately notified the police, who began an investigation. Shattuck-Owen claimed that Snowbird carelessly allowed numerous people to view the video, including unnamed co-workers who happened to be in the security office when the video was showing. However, the court found that only ten people could be identified as having seen the video and, even if an unnamed two or three others had seen the video, those facts still would not support an invasion of privacy claim. The limited number of viewers did not constitute public disclosure of private facts.

Truthful Reporting of Employee to Police Does Not Subject Employer to Title VII Liability

In Aviles v. Cornell Forge Company (2/21/2001), Aviles alleged that Cornell Forge unlawfully retaliated against him for filing an EEOC complaint by falsely reporting to the police that he had threatened his supervisor with a gun. The U.S. Court of Appeals for the Seventh Circuit, however, affirmed the lower court's directed verdict in favor of Cornell Forge.

Aviles had been suspended and escorted off the premises by police after refusing to leave Cornell Forge's plant. Despite being directed not to return, Aviles was seen parked in his car a block and a half away from the entrance to the plant. Someone from the plant again called the police and, in response to police questioning whether Aviles was armed, the caller said that he did not know but that Aviles might be armed. Based on that call, the police confronted Aviles, allegedly injuring his arm. In response to questioning by the police dispatcher, Aviles' supervisor informed the dispatcher that Aviles had threatened in the past to kill himself and other plant workers with a gun. However, there was no evidence that these statements were passed on to the police officers at the scene and Aviles did not prove that these statements were false.

In light of those facts, the court ruled that Cornell Forge's report to the police was neither adverse employment action nor retaliation for Aviles' previous EEOC complaint. The court affirmed the verdict in favor of Cornell Forge, concluding that a truthful non-discriminatory report to the police should not subject an employer to Title VII liability.

First Circuit Orders Trial on Union's Alleged Unlawful Secondary Boycott Activity

In Intercity Maintenance Co. v. Local 254 SEIU (3/2/2001), a non-union janitorial service company, Intercity Maintenance, sued a union, its local affiliate, and two of the local's officials in connection with the union's heavy-handed organization tactics. Intercity alleged that the union had engaged in unlawful secondary boycott activity, as well as other unlawful conduct including defamation. The union had pressured a number of Intercity's customers to cease doing business with Intercity and had falsely accused Intercity of violating state and federal laws.

Although the defamation claims and the claims against the union officials were dismissed, the U.S. Court of Appeals for the First Circuit ordered that the secondary boycott claim against the union local proceed to trial. The basis of the claim was the local's conduct in picketing and pressuring a number of Intercity's clients to cease doing business with Intercity. It is an unfair labor practice for a union to threaten, coerce or restrain a company by forcing it to cease doing business with another company. The court found that a jury could reasonably have concluded that the union's picketing threat caused Intercity to lose a contract with one of its clients five weeks later.

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