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Welcome to e-News: From the Labor, Employment and Benefits Group of Robinson & Cole

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U.S. Supreme Court Upholds Right of Employers to Compel Arbitration of Employment Disputes

In an important decision for employers, the U.S. Supreme Court upheld the right of employers to compel employees to arbitrate disputes. In Circuit City Stores, Inc. v. Adams (3/21/2001), the court analyzed whether an employee, Saint Clair Adams, was bound by an employment application that included an arbitration provision. The application provided that she would settle all claims arising out of her employment with Circuit City by final and binding arbitration. Two years after she was hired, she filed a discrimination lawsuit in California state court. Circuit City filed a federal lawsuit seeking to enjoin the state court action and compel arbitration. A lower court ruled that Circuit City could not arbitrate because the Federal Arbitration Act did not apply to employment contracts. The FAA does not apply to "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." The lower court interpreted this language as excluding all employment contracts. However, the Supreme Court disagreed, finding that the FAA only excepted employment contracts of transportation workers. A large

number of states filed briefs objecting to any decision that the FAA would preempt state employment laws restricting employers and employees from arbitrating claims. In recognizing that the FAA would preempt state laws limiting arbitration of employment disputes, the court noted some of the benefits of arbitrating employment claims, including lower costs and quicker resolutions than formal court proceedings.

U.S. Supreme Court Rules that ERISA Preempts Washington State Beneficiary Law

In Egelhoff v. Egelhoff (3/21/2001), the U.S. Supreme Court ruled that the Employee Retirement Income Security Act preempted a Washington statute that would have invalidated a participant's selection of his wife as beneficiary on account of his divorce. David Egelhoff designated his wife as the beneficiary of a life insurance policy and pension plan provided by his employer. Within months following their divorce, he died without a will. Egelhoff's children from a previous marriage filed a lawsuit to recover the insurance proceeds and pension plan benefits. The children relied on a Washington statute that revokes a spousal beneficiary designation automatically upon divorce.

The Supreme Court focused on ERISA's broad preemption section providing that ERISA supersedes all state laws relating to any employee benefit plan. Under the Washington statute, plan administrators must pay benefits to beneficiaries under state law, rather than to those identified by the plan documents. The court explained that, if ERISA plans were subject to different obligations in different states, plan administrators would be unable to manage their plans. Subjecting plans to different state's laws also would thwart ERISA's goal of uniformity.

Court Reduces $400,000 Jury Verdict to $0 Because Former Employee Refused to Produce Social Security Disability Benefit Information

In our 8/14/2000 edition of e-News, we reported on a case underscoring the importance of reviewing information contained in an employee's application to the Social Security Administration for disability benefits. In Rodriguez v. IBP, Inc. (3/14/2001), the U.S. Court of Appeals for the Tenth Circuit sanctioned a former employee for failing to produce a signed release to allow the company's attorneys to obtain copies of his social security records.

Pascual Rodriguez filed a workers' compensation claim following an injury to his elbow. He worked in light duty jobs for two years until he claimed he could no longer perform any light duty work. IBP allowed Rodriguez to call in daily to determine whether he was able to work. Rodriguez failed to call and IBP terminated his employment.

Two years later, Rodriguez sued IBP claiming he was terminated in retaliation for exercising his rights under the workers' compensation laws. IBP claimed Rodriguez was terminated for violating its no call/no show policy and that he was physically unable to perform the duties

of his position on the day of his termination.

Three weeks before trial, IBP learned for the first time that Rodriguez was receiving social security disability benefits. IBP asserted that those documents might show that Rodriguez was disabled on the day of his termination. IBP requested that Rodriguez sign a release and produce documents related to his disability benefits, but Rodriguez failed to do so. The jury awarded Rodriguez $411,000. IBP requested an order requiring Rodriguez to provide a release for his social security records so that it could overturn the judgment. The trial court ordered Rodriguez to produce a signed release and, when he failed to do so, found him in contempt. As punishment, the court ruled that for each business day in which the documents were not submitted the judgment would be reduced by 5%. Because Rodriguez failed to sign the release, by the time of the appeal the judgment had been reduced to zero. The appellate court affirmed the trial court's judgment and contempt order, ruling that the sanction was appropriate to protect the judicial process.

Court Recognizes Claim for Wrongful Discharge for Refusing to Sign an Illegal Noncompetition Agreement

Norwest Safety Protective Equipment asked its employee, Frederick Dymock, to sign a noncompetition agreement after 17 years of work. The agreement provided that, during the term of employment and for a period of five years thereafter, Dymock would not solicit the business of any customer or target and would not offer employment to any employee who was employed during Dymock's employment. Dymock refused to sign and was terminated.

He filed a claim for wrongful discharge on the grounds that he was forced to sign a noncompetition agreement that violated state law. Norwest operated in Oregon which has a statute permitting noncompetition agreements only if entered into upon hire or in connection with a promotion. The noncompetition agreement was therefore illegal. In Dymock v. Norwest Safety Protective Equipment for Oregon Industry, Inc. (2/14/2001), the Oregon Court of Appeals ruled that, under Oregon law, an employee can bring a wrongful discharge action for refusing to sign a noncompetition agreement that violates Oregon law.

Court Weakens Injunction Preventing Former Employees from Hiring Coworkers

In Atmel Corporation v. Vitesse Semiconductor Corporation (2/15/2001) the Colorado Court of Appeals reversed a preliminary injunction entered in favor of Atmel prohibiting three former employees from participating in Vitesse's hiring process. Atmel is a semiconductor manufacturing company employing over 2,200 people. Vitesse is also a semiconductor manufacturing company that recently opened a nearby facility. Three employees hired by Vitesse had signed an employment agreement containing a nonsolicitation clause. That clause provided that for a period of one year following their termination of employment with Atmel they would not directly or indirectly solicit, recruit or attempt to persuade any Atmel employee to terminate employment. Based upon evidence that the three former employees were involved in Vitesse's hiring process, the trial court

enjoined them from participating in the hiring process of any Atmel employees. On appeal, the appellate court examined the terms of the nonsolicitation provisions and found that the terms "solicit, recruit or attempt to persuade" all imply actively initiated contact by the three employees. Because the injunction also prevented the three former employees from participating in the hiring process for Atmel employees who contacted Vitesse on their own, the injunction was overly broad. In addition, the appellate court found that by the date of the trial the one-year period had lapsed for two of the former employees. Accordingly, there was no basis for enjoining those two employees.

Employer Prevails on He Said/She Said Sexual Harassment Claim

Although many sexual harassment cases survive summary judgment and go to trial because of conflicting accounts of the relationship, sometimes an employer will prevail. In Mosher v. Dollar Tree Stores, Inc. (2/16/2001) the U.S. Court of the Appeals for the Seventh Circuit affirmed the dismissal of a sexual harassment claim brought by an employee who had a nine-month sexual relationship with her boss.

Nick Limo, the store's manager, hired Gloria Mosher as a part-time cashier. Mosher had not held a job for eleven years. After her first day of work, Limo asked her out to dinner and she accepted. On her third day, Limo pulled Mosher on to his lap and fondled her breasts. Although she protested and left the room, Limo continued asking her out to dinner. Two weeks later, Mosher gave Limo directions to her home where they had sex and spent the night. Limo essentially moved into Mosher's apartment and Limo paid one-half of the rent. Limo also paid for clothes for Mosher and bought a microwave and air conditioner for her apartment. They attended social functions together, including a birthday celebration with Limo's parents. Mosher never reported the situation to Limo's superior. Although Mosher saw two physicians, she reported that she was quite happy with her new job and that she had a new boyfriend. Mosher quit and obtained a higher paying job a short distance away from the store where Limo worked.

Mosher filed a sexual harassment claim and asserted that she was constructively discharged. She contended that her ongoing sexual relationship with Limo was involuntary and that she maintained it because she needed to keep her job. However, the appellate court agreed that dismissal was appropriate because Mosher was unable to show any adverse job action and, given the nine-month long consensual relationship, could not establish constructive discharge.

Court Declines to Enforce Noncompete Agreement Because Internet Provided Data Allowing Former Employees to Contact Former Customers

Thomas Cole, a plan administrator, and James Crocicchia, a sales representative, were employed by Heritage Benefit Consultants until they left on the same day to establish a competitive business. Although they each had access to client files, client lists, contact

names, rate and portfolio structures, and commission structures, they did not take with them any information other than what was stored in their memories. Immediately following their resignations, Cole and Crocicchia actively solicited clients of Heritage. Of the 40 to 50 clients they solicited, 15 left for Cole and Crocicchia.

Heritage applied for an injunction to restrain Cole and Crocicchia from soliciting its clients. Heritage alleged that Cole and Crocicchia misappropriated its trade secrets and breached an employment contract containing a noncompete provision. In Heritage Benefit Consultants, Inc. v. Cole (2/23/2001) the Connecticut Superior Court, in an unreported decision, denied the application for an injunction finding that Cole and Crocicchia properly solicited Heritage's clients.

Underlying the court's decision was evidence offered by Cole and Crocicchia that services on the Internet, including FreeERISA.com, make available to the public lists of all employers who filed a Form 5500, including clients of Heritage. The court found that information on the plan's sponsor, address, employer identification number, telephone number, number of participants, listing of assets, name of trustees, names of brokers, listing of insurance company used to fund the plans, the amount of funds, the name of the actuaries and the names of any third party administrators were readily available over the Internet. The court also noted additional Internet services that provide the names of pension administrators, brokers and actuaries which allowed Cole and Crocicchia to identify 120 clients of Heritage. Because this information was so readily available in the public domain, the court found that the only method of protecting Heritage's business interest was to require employees to enter into enforceable noncompete agreements.

In considering whether to enforce the employment agreement containing a noncompete provision, the court noted that Heritage had failed to deliver capital stock in the corporation as a signing bonus upon the date of hire, as required by the agreement. Because Heritage failed to deliver those stock certificates or their equivalent value to the employees, there was a material breach of the agreement rendering the noncompete provisions unenforceable.

President Bush Signs Bill Overturning Ergonomics Regulations

On March 20, 2001, President Bush signed a bill repealing the new ergonomics regulations enacted by the U.S. Occupational Safety and Health Administration.

For more information, please contact us

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