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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 Agrees to Hear Two ADA Cases, Rejects a Third

The U.S. Supreme Court agreed to review two cases dealing with employee rights under the Americans with Disabilities Act. The Supreme Court will decide the cases in its term that begins in October.

In Toyota Motor Mfg. Kentucky Inc. v. Williams (8/29/2000), an assembly line worker, Ella Williams, developed carpal tunnel syndrome and tendonitis while working for Toyota. Williams claimed that Toyota failed to accommodate her condition. The U.S. Court of Appeals for the Sixth Circuit considered whether repetitive-motion injuries such as Williams' meet the definition of "disability" under the ADA. The trial court granted summary judgment on the ground that Williams was not substantially limited in a major life activity, the test under the ADA. But the Sixth Circuit reversed, ruling that Williams' carpal tunnel syndrome and tendonitis sufficiently impaired her arms, shoulders and neck to trigger coverage under the ADA.

In US Airways Inc. v. Barnett (10/4/2000), an airline cargo handler with back problems sued his unionized employer alleging that the company violated the ADA by refusing to permanently reassign him to an available mail room job. The company asserted that the available mail room job was opened to bidding based on seniority. The U.S. Court of Appeals for the Ninth Circuit considered whether the ADA requires or allows an employer to bypass a valid seniority system to give disabled employees a preference over other workers in reassignment decisions. The Ninth Circuit held that a seniority system is not a bar, but rather is merely a factor to consider in deciding whether a requested accommodation poses an "undue hardship" on an employer.

The Supreme Court declined to review another ADA case. In Bekker v. Humana Health Plan, Inc. (9/27/2000), a physician was fired after co-workers and patients complained that she smelled of alcohol. The physician claimed that her employer should be required to prove that her alleged disability, alcoholism, posed a "direct threat" in the workplace, but the U.S. Circuit Court of Appeals for the Seventh Circuit upheld the termination.

U.S. Supreme Court Rules that Payroll Taxes on an Award of Back Wages Should be Computed at the Rate Applicable in the Year the Wages are Actually Paid

In United States v. Cleveland Indians Baseball Co. (4/17/2001), the U.S. Supreme Court unanimously held that back wages are subject to the Federal Insurance Contribution Act and the Federal Unemployment Tax Act based on the year the wages are actually paid, as opposed to the year in which the wages should have been paid. The case arose from a grievance settlement between several Major League Baseball clubs and the players' union where the clubs agreed to pay $280 million to players with claims for back wages. The back wages were owed from 1986 and 1987, but were ultimately paid in 1994. Both the clubs and the union unsuccessfully argued that back wages should be taxed under FICA and FUTA by reference to 1986 and 1987, the years in which the salary payments should have been made, as opposed to 1994, the year in which the payments were actually made. The Supreme Court, however, disagreed. The Court relied on the language of the FICA and FUTA statutes and deferred to administrative interpretations consistent with its decision.

NLRB General Counsel Issues Guidance Concerning Union Security Clauses, Beck Posting Requirements

In February, President Bush issued Executive Order 13201 (2/22/2001) requiring federal contractors to post workplace notices informing employees of their rights under the U.S. Supreme Court's decision in Communication Workers of America v. Beck (1988). The Beck decision held that certain employees who are covered by a union security clause but who choose not to become union members must be allowed to pay reduced fees. Essentially, the decision held that union "objectors" could not be charged by the union for nonrepresentational expenses. President Bush's executive order requires that federal contractors post a notice that directs employees to contact the National Labor Relations

Board for more information about the issue.

In response, the NLRB Acting General Counsel issued guidelines (4/6/2001) to agency personnel designed to answer questions about union security clauses in collective bargaining agreements. The guidelines, designed to serve as a desk reference in responding to public inquiries, are written in question and answer format. The guidelines explain the Beck decision, discuss a union's obligations under Beck, and outline employee rights and remedies for union violations.

Employee May Add Retaliation Claim to Existing Sexual Harassment Complaint Even Though She Failed to Previously Assert that Claim to EEOC

In Clockedile v. New Hampshire Department of Corrections (3/20/2001), the U.S. Court of Appeals for the First Circuit Court decided that a sexual harassment plaintiff could add a claim of retaliation to her complaint even though she had not previously asserted that retaliation claim at the time she filed her charge with the U.S. Equal Employment Opportunity Commission. Generally, a plaintiff wishing to file a discrimination complaint in federal court must first file a charge with the EEOC and receive an agency determination prior to filing the complaint. Any claims not asserted at the EEOC will be precluded. Nancy Clockedile was employed as a counselor and teacher at a minimum security prison in New Hampshire. In her charge filed with the EEOC, she claimed that her unit manager made sexually offensive remarks to her. Subsequent to her complaint, the Department of Corrections discontinued all of Clockedile's classes in the unit, transferred her to a hallway desk, and later transferred her out of the corrections unit, all of which Clockedile deemed retaliatory. At trial, Clockedile lost on her sexual harassment claim but was awarded $129,000 on her retaliation claim. The Department of Corrections argued that the retaliation claim was defective due to Clockedile's failure to first file a retaliation charge with the EEOC. The Court of Appeals disagreed, ruling that retaliation claims are preserved so long as the retaliation is reasonably related to and grows out of the discrimination charge filed with the EEOC.

No Violation Where Employee Terminated for Refusing to Sign Non-Compete Agreement

G&W presented Donna Simcic with a non-compete agreement about one month after she began working. Simcic refused to sign the agreement because she considered it unlawful, unenforceable, and contrary to the public policy of Connecticut. G&W fired her for refusing to sign it.

In Simcic v. G&W Management, Inc. (12/5/2000), the Connecticut Superior Court dismissed Simcic's claims of wrongful termination, breach of the implied covenant of good faith and fair dealing, and negligent and intentional infliction of emotional distress. The court found that an employee presented with an unlawful agreement has other recourse

available than simply refusing to sign. Significantly, the court declined to rule that terminating an employee for refusing to sign a non-competition agreement somehow violated the public policy of promoting free trade. The court also noted that permitting claims such as Simcic's would impair managerial decisions regarding confidentiality, security, and investment in the hiring and training of employees.

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