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Selecting Annuity Provider without Conducting a Proper Investigation Violates ERISA

In [Bussian v. RJR Nabisco Inc.](#) (8/14/2000), the U.S. Court of Appeals for the Fifth Circuit ruled that RJR Nabisco breached its fiduciary duties under the Employee Retirement Income Security Act by failing to conduct “a thorough, impartial investigation of which provider or providers best served the interests of the participants and beneficiaries.” After RJR Nabisco selected Executive Life Insurance Company to provide annuities to cover an overfunded pension plan, the California insurance commissioner put Executive Life in conservatorship due to financial difficulties. According to the court, a proper investigation would have revealed Executive Life’s difficulties. The Fifth Circuit covers Louisiana, Mississippi, and Texas.

New Hampshire Supreme Court Rules that Recouping Hiring Expenses Cannot Support Restrictive Covenant

In [National Employment Service Corp. v. Olsten Staffing Service, Inc.](#) (8/15/2000), the

New Hampshire Supreme Court determined that “the mere cost associated with recruiting and hiring employees is not a legitimate interest protectable by a restrictive covenant in an employment contract.” Like many other states, New Hampshire law recognizes limited restraints to protect an employer’s legitimate interests. Those interests include protecting confidential information, trade secrets, customer lists, employer contacts and goodwill.

National and Olsten supplied temporary employees to a manufacturer, when the manufacturer appointed Olsten its exclusive supplier. National required its employees to sign employment contracts containing a restrictive covenant. The covenant barred them from working at the manufacturer for 90 days following termination.

Offensive Comments for Three Months May Support Hostile Work Environment Claim

Two African-American women were employed at a McDonald’s Restaurant franchise in New York operated by Garzarelli Food Specialties, Inc. During a three-month period, a coworker, Richard Corliss, made offensive comments about coworkers, including “Puerto Ricans are harder workers than Mexicans;” a Mexican coworker “smelled;” he had “a problem with Mexicans;” the town was “getting worse because of the blacks and Puerto Ricans;” and “Blacks and Puerto Ricans are lazy and don’t want to work.” The women overheard Corliss tell another coworker that he is “a lazy black boy” and that he had a “rope in the back shed to hang [his] butt.” After a series of complaints to their supervisors, Corliss received a verbal warning. But he continued making offensive comments. Corliss then received a written warning. The next day, Corliss told another coworker that he “should go out and buy a truck and drag someone by the truck who is black.” The two women resigned, citing a hostile work environment.

The women filed claims against Garzarelli claiming a hostile work environment under Section 1981 of the Civil Rights Act. The lower court dismissed that claim determining that the insults were few in number, occurred over a short time and were not severe enough to impose liability. The U.S. Court of Appeals for the Second Circuit reversed.

In [Whidbee v. Garzarelli Food Specialties, Inc.](#) (8/14/2000), the court applied the totality of circumstances test. Although the offensive comments were over a short period of time, they including one physical threat and “a veritable barrage of racial epithets.” Accordingly, the court ruled that a jury should determine whether the women had proven a hostile environment. The Second Circuit covers Connecticut, New York and Vermont.

Disabled Employee’s Failure to Use Job-Posting Process Bars Recovery under the ADA

In [Burns v. Coca-Cola Enterprises, Inc.](#) (7/24/2000), the U.S. Court of Appeals for the Sixth Circuit ruled that an employee’s failure to use his employer’s job-posting process bars recovery under the Americans with Disabilities Act. Burns worked as a deliveryman until he sustained a back injury. After surgery, his doctors imposed a 23-pound lifting restriction.

Burns knew about the job-posting process but did not apply for any positions for which he was qualified. After he was terminated, Burns filed a lawsuit claiming that his employer breached a duty under the ADA to find him an alternative position.

The court ruled that an employer has a duty under the ADA to transfer a disabled employee to a new position if the employee is otherwise qualified. But the employer is not required to reassign the disabled employee to a position for which he or she is not qualified. Nor is the employer required to waive legitimate, non-discriminatory policies or displace other employees' rights just to accommodate the disabled employee. The court found that the job-posting process was a legitimate, nondiscriminatory administrative policy and Burns failed to comply with it. The Sixth Circuit covers Kentucky, Michigan, Ohio and Tennessee.

EEOC Not Restrained by Title VII Damages Cap

The U.S. Court of Appeals for the Ninth Circuit ruled in [EEOC v. Dinuba Medical Clinic](#) (8/24/2000) that each aggrieved employee represented by the U.S. Equal Employment Opportunity Commission in an action under Title VII may receive up to the statutory damages cap without having to file a separate suit or become a plaintiff in the action. The EEOC filed a lawsuit on behalf of three former employees who complained that the administrator of the clinic verbally abused them, repeatedly groped his genitals in their presence, engaged in sexually-charged bodily contact with them, and subjected them to offensive sexual comments and jokes. After a trial, a jury awarded \$150,000 to one employee and \$25,000 to each of the other two employees. Under Title VII's damages cap, the \$150,000 award was reduced to \$50,000.

On appeal, the clinic argued that Title VII's statutory damages cap should limit the total damages to \$50,000. According to the clinic, since none of the employees were plaintiffs and since this was not filed as a class action lawsuit, there was only one plaintiff -- the EEOC. As the clinic had less than 100 employees, the damages should have been capped at \$50,000.

The court found Title VII ambiguous and so deferred to the EEOC's interpretation. The EEOC in a 1992 Enforcement Guidance reasoned that each employee should receive the eligible damages up to the cap, whether they sue individually, as part of a class action or by the EEOC on their behalf. To rule otherwise, reasoned the EEOC, would thwart Congressional intent to fully compensate persons harmed by discrimination and deter further discrimination. The Ninth Circuit covers Alaska, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington.

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