ROBINSON & COLE LLP
LABOR, EMPLOYMENT AND BENEFITS

e-News

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

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Court Dismissed Emotional Distress Claims Where Employee Refused to Sign Medical Releases

In Schoffstall v. Henderson (8/18/2000) the U.S. Court of Appeals for the Eighth Circuit dismissed an employee's emotional distress claims due to her willful failure to sign medical releases. Schoffstall sued the U.S. Postal Service for sex discrimination, retaliation and sexual harassment. Her claims included allegations of extreme emotional distress. The Postal Service requested medical releases for any doctors, psychologists, psychiatrists and counselors she had seen since 1970. Schoffstall not only refused to sign them but, even after the court ordered her to sign them, she secretly instructed the doctors to withhold records. On appeal, Schoffstall argued that her medical records were sought to embarrass and harass her and that they were protected by a psychtherapist-patient privilege. However, the court ruled that, because she alleged emotional distress, the records were discoverable and that the privilege did not apply.

ADEA Claims Released Where Company Complied with OWBPA's Informational

Requirements

In Adams v. Moore Business Forms, Inc. (8/24/2000) the U.S. Court of Appeals for the Fourth Circuit ruled that Moore Business Forms complied with the informational requirements of the Older Worker Benefit Protection Act. Moore offered 190 employees a severance program in exchange for signing a general release. After signing the release and receiving benefits, 14 employees claimed that their releases were void because the company failed to comply with the informational requirements under the OWBPA. Specifically, they claimed that the company failed to include position and age information for another facility. However, the court determined that, because Moore only considered the employees at that facility for layoffs, it properly confined the information to that facility. Accordingly, the 14 employees were barred from bringing age discrimination claims under the Age Discrimination in Employment Act.

Title VII Does Not Bar Sexual Orientation Discrimination

In Simonton v. Runyon (8/22/2000) the U.S. Court of Appeals for the Second Circuit rejected a postal worker's claim that discrimination based on "sex" under Title VII of the Civil Rights Act included discrimination based on sexual orientation. The court detailed the repeated assaults and indecent remarks directed at Simonton by coworkers of the U.S. Postal Service, calling it "morally reprehensible." But, as explained by the court, the term "sex" in Title VII refers only to membership in a class delineated by gender and does not bar discrimination based on sexual orientation.

Employer's Heightened Performance Expectations May Not Apply to Salespeople

For 30 years, Fisher was a salesman selling animal health products. He consistently received average or above-average performance evaluations and received the company's national sales award seven times. After a reorganization, Fisher was transferred to an elite corporate sales unit. This unit was the top sales unit, and its employees were to be held to the highest standards of performance. Fisher, age 60, was transferred to a lesser unit because his manager felt he lacked sufficient product knowledge, his written and oral skills were replete with grammatical errors, and he frequently talked more about social issues than the products he was trying to sell. His accounts were split between two younger salesmen. Following his transfer, Fisher sued Pharmacia & Upjohn for age discrimination in violation of the Age Discrimination in Employment Act. The district court dismissed his claims on summary judgment.

But in Fisher v. Pharmacia & Upjohn (9/5/2000) the U.S. Court of Appeals for the Eighth Circuit reversed summary judgment for the employer determining that Fisher presented sufficient evidence for an ADEA claim. The court rejected the company's claim that it had applied "heightened but legitimate expectations" to its salespeople. Instead, the court ruled that "the selling of product is the primary responsibility of a salesperson" and discounted the company's expectations. Customers Fisher had serviced testified that he was a good

salesman, that he had the ability to "talk country" with customers, and that his customers found him knowledgeable about his products.

IRS Issues New Rules Allowing Changes in Benefit Options Under Many Defined Contribution Plans

The Internal Revenue Service issued new final regulations, effective September 6, 2000, that allow many defined contribution plans to eliminate most optional forms of benefit.

Under the new rules a defined contribution plan (such as a profit sharing plan or 401(k) plan) may eliminate all currently available forms of payment except a lump sum distribution. A 401(k) plan, for example, that permits distribution in the form of a lump sum, an annuity or installment payments may now be amended to eliminate the annuity and installment payment options.

Also, a money purchase pension plan must continue to require automatic payment in the form of a joint and 50% survivor annuity payable to the participant and the participant's spouse (unless the participant's spouse consents to distribution in another form) and a life annuity for an unmarried participant. But any other distribution option, except a lump sum, may be eliminated.

These new rules should help many plan sponsors who had been forced to provide numerous grandfathered forms of payment under their defined contribution plans. If you have any questions regarding the new rules or are considering amending your plan to eliminate some of the available forms of payment, please consultBruce Barth, Dawn Zammitti, or John Tannenbaum.

Employee Not Permitted to Rely on Manager's Written Promise of Mileage Allowance for Duration of Employment

In Fowler v. SmithKline Beecham Clinical Laboratories, Inc. (8/31/2000) the U.S. Court of Appeals for the Eighth Circuit ruled that an employee could not rely on her manager's written memo that she would be paid a mileage allowance "for the duration of your employment with SmithKline." Fowler worked as a courier for SmithKline, picking up lab samples and delivering test results to medical service providers. She used her own car and SmithKline paid her a mileage allowance. Despite her manager's written assurance that Fowler would continue receiving the mileage allowance, SmithKline implemented a policy standardizing its couriers. Pursuant to that policy, SmithKline provided Fowler with a company car. She objected and soon resigned.

The court found that Fowler, who alleged fraud, failed to prove that her manager knew his memo was false because he paid her the allowance for over four years and, therefore, had intended to keep that promise. The court also found that Fowler was an at-will employee

and, therefore, her manager's promise was unenforceable absent a specific term of employment. Accordingly, the court reversed a jury verdict awarding the employee $200,000 compensatory damages and $1,000,000 punitive damages.

For more information, please contact us

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