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

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Ambiguous Mandatory Arbitration Provision in Employment Contract Does Not Bar Discrimination Lawsuit

In Garfinkel v. Morristown Obstetrics & Gynecology Associates, P.A. (6/13/2001), the New Jersey Supreme Court ruled in favor of an Ob-Gyn physician, David Garfinkel, allowing him to sue his employer in court despite the fact that he had signed an agreement to arbitrate "any controversy or claim arising out of, or relating to" his employment contract. The court found the above-quoted language was ambiguous, and therefore not an enforceable waiver of Garfinkel's statutory rights under New Jersey's anti-discrimination laws. Although arbitration agreements are generally enforceable, and even favored, the court ruled that the agreement to arbitrate did not demonstrate a clear and unmistakable waiver or understanding by Garfinkel that he was giving up his right to sue in court. The agreement to arbitrate was interpreted as applying only to disputes concerning his contract or the terms and conditions of his employment, but not to statutory claims. The court noted that the agreement did not reference, either expressly or generally, the anti-discrimination statute at issue.

Garfinkel alleged in his suit that he was unlawfully discharged on account of his gender. He also claimed defamation and tortious interference. The court held that because the arbitration provision was insufficient to constitute a waiver of Garfinkel's statutory discrimination claims, Garfinkel's other claims should also be tried in court in the same action due to principles of judicial economy.

Massachusetts High Court Overturns $500,000 Jury Award, Eliminates Long-Standing Analysis on Proof of Discrimination Claims at Trial

In Lipchitz v. Raytheon Company (7/9/2001), the Supreme Judicial Court of Massachusetts overturned a $500,000 jury verdict in favor of Martha Lipchitz, an employee who claimed she was denied a promotion on account of her gender. The court found that the jury instructions were improper in that the trial court refused Raytheon's request to instruct the jury that in order to find for Lipchitz the jury must find that discrimination was "the determinative cause" for the company's decision not to promote her. Instead, the jury had been instructed that they need only find that Raytheon's stated reason for denying the promotion was a "pretext," without necessarily finding that Lipchitz had actually been denied promotion because of her gender. The court remanded the case for retrial.

Significantly, the court noted that jury instructions in discrimination cases have become problematic and needlessly complex over time. Historically, following a 1973 U.S. Supreme Court decision, where there is no direct evidence of discrimination the analytical framework for proving discrimination involves a complex multi-step burden-shifting analysis, one step of which involves the requirement of proving "pretext." The Massachusetts high court deemed this framework to involve questions of law for the judge, not the jury, and encouraged Massachusetts judges in the future to craft jury instructions that will better focus the jury's attention on the ultimate issue – discriminatory animus and causation, not "pretext."

Court Dismisses Claim of Intentional Infliction of Emotional Distress

In Dollard v. Board of Education of the Town of Orange (5/29/2001), a school psychologist, Linda Dollard, sued her employer alleging both intentional and negligent infliction of emotional distress. Dollard claimed that she was the victim of a concerted effort to force her to resign. She alleged that her supervisors and the board of education were hypercritical of her conduct and performance, that they transferred her to a school where she did not wish to work, that they publicly admonished her for chewing gum and for being late and disorganized, and that they unnecessarily placed her under the intensive supervision of a friend of one of her supervisors. However, the lower court dismissed both of Dollard's claims. Dollard appealed the dismissal of her intentional infliction of emotional distress claim, but the dismissal was upheld on appeal. In affirming the dismissal, the appellate court held that although the conduct alleged may have been distressful and hurtful, it did not

rise to the level of extreme or outrageous conduct that would support a claim for intentional infliction of emotional distress.

New Plant Owner Deemed "Successor" and Obligated to Bargain With Pre-Existing Union

In Pennsylvania Transformer Technology, Inc. v. NLRB (6/29/2001), the U.S. Court of Appeals for the District of Columbia Circuit upheld the National Labor Relations Board's ruling that the purchaser of a manufacturing plant unlawfully failed to recognize the union that represented the seller's employees. The seller of the plant, whose workers were represented by the United Steelworkers union, closed the facility in November 1994. At that time, the seller and the union entered into an agreement that provided for recognition of the union if the plant was re-opened within two years. Thereafter, due in part to the efforts of the union, a buyer was found and the plant resumed production in January 1997. When the union requested recognition, the new owner declined, resulting in the filing of an unfair labor practice charge. The NLRB ruled in favor of the union and the appeals court agreed, ruling that despite the two-year hiatus the buyer was a "successor employer" and was bound to bargain with the union. The court noted that there was substantial continuity of operations given that a majority of the new company's employees had worked for the old company and were continuing to do the same work, using similar production processes and making similar products for many of the same customers.

National Electronics Store Chain Settles Overtime Dispute for $5.4 Million

The U.S. Department of Labor issued a press release (7/2/2001) announcing that national electronics store chain Best Buy Inc. agreed to pay $5.4 million to settle claims that it failed to properly pay overtime to 70,000 current and former employees. The DOL alleged that Best Buy failed to pay workers for time worked on their days off, for time worked during meal breaks, for time worked after the employees punched-out, and for time spent at the end of shifts waiting for managers to unlock doors to let the employees leave. Best Buy was also accused of not keeping accurate time records as required by the Fair Labor Standards Act. This settlement is a strong reminder of the importance of properly paying non-exempt employees and keeping accurate time records.

IRS Issues Guidance on the Definition of Medical Expense

The U.S. Internal Revenue Service provided new guidance on whether certain types of expenses qualify as deductible medical expenses. Since reimbursement for medical expenses from flexible spending arrangements is only permitted if the expense qualifies as a deductible medical expense, this guidance is relevant to sponsors of medical expense flexible spending arrangements. The IRS recognized that obesity is a disease and that physician prescribed medicine to treat obesity and physician prescribed weight loss programs to treat a specific disease, such as obesity, are therefore deductible expenses. The

cost of a prescribed special diet that exceeds the cost of a regular diet is also a deductible expense. The IRS reaffirmed its position that the cost of vitamins and herbs are deductible only if prescribed. Note that this guidance was issued in the form of private letter rulings so that taxpayers should not necessarily rely on the conclusions reached. However, the conclusions generally indicate the current IRS position on these issues.

Connecticut Passes Law Concerning Breastfeeding in the Workplace

Connecticut passed a new law, Public Act 01-182 (7/6/2001), establishing protections for women breastfeeding or expressing breast milk in the workplace. The law provides that an employee may express breast milk or breastfeed at work during her meal or break period, and that the employer must make "reasonable efforts" to provide a room or other private location for such purpose. The term "reasonable efforts" is defined much like the term "reasonable accommodation" under disability discrimination laws. That is, employers are required to make efforts to the extent the efforts do not pose an undue hardship on the company. The law also prohibits discrimination against an employee for exercising her rights under the statute.

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