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

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Termination of Smoke-Sensitive Employee May Constitute Retaliation under ADA

Lori Denise Rhoads worked as financial analyst for the Standard Federal Savings Association. Rhoads suffered from asthma and related migraine headaches, which became exacerbated by exposure to second-hand cigarette smoke. Upon Rhoads's request, SFSA initially permitted Rhoads to work from home, but subsequently required her to return to work at the office after it enacted a policy prohibiting smoking in the workplace. However, after Rhoads claimed to have suffered a relapse of asthma and migraine headache symptoms because of continuing cigarette smoking during two subsequent meetings at SFSA, she postponed her expected return date. Rhoads remained out of work and told SFSA that her doctor would submit documentation of her condition within a few days. Although her doctor composed a letter that day, he did not fax it to SFSA until three days later. SFSA terminated Rhoads's employment the day before receiving the doctor's letter.

Rhoads sued SFSA for disability discrimination and retaliation under the Americans with Disabilities Act and for violation of the Family and Medical Leave Act. The trial court

dismissed her ADA claims and a jury ruled against her on her FMLA claim. Rhoads appealed.

In Rhoads v. FDIC (7/12/2001), the U.S. Court of Appeals for the Fourth Circuit affirmed the dismissal of her ADA and FMLA claims because she did not prove she was disabled under the ADA or afflicted with a serious health condition under the FMLA. However, the court reinstated her ADA retaliation claim because it did not require proof of any disability.

Title VII Plaintiff Awarded $1.00 Nominal Damages Might Recover Attorneys' Fees

Lenard Barber, who is half African-American and half Native-American, sued his former employer, T. D. Williamson, Inc., for hostile work environment, racially discriminatory termination and retaliation in violation of Title VII. A jury ruled in favor of Barber on the hostile work environment claim and for Williamson on the discriminatory termination and retaliation claims, and awarded Barber nominal damages in the amount of $1.00. The court awarded Barber attorneys' fees, citing the general rule on Title VII that attorneys' fees are to be awarded to prevailing parties.

In Barber v. T.D. Williamson, Inc. (7/2/2001), the U.S. Court of Appeals for the Tenth Circuit ordered the lower court to reconsider the award of attorneys' fees focusing on the difference between the amounts sought and the damages recovered, the significance of the legal issue on which Barber prevailed, and the accomplishment of a public goal other than occupying the time and energy of counsel, court, and the parties. The court emphasized that the remand should not be taken as either an endorsement or a condemnation of the original award to Barber.

Employees Terminated for Sending Sexually Explicit E-mails Are Not Entitled to Unemployment Compensation

Christopher Guzman and Thomas King were terminated from their employment with Autoliv ASP Inc. for sending over the company's e-mail system approximately thirty-six e-mail messages containing jokes, photos, and videos of a sexually explicit nature to co-workers and others outside the company. In terminating the employees, Autoliv cited concerns about the danger of sexual harassment suits because of the content of the messages, and noted that its company policy, contained in its handbook and in three company-wide e-mail messages, expressly prohibited using e-mail for non-business messages. Guzman and King filed for unemployment compensation, which was denied. They subsequently appealed, asserting that their terminations were unjust because they were not aware they could be fired for misusing the company's e-mail system. In Autoliv ASP Inc. v. Utah Department of Workforce Services (6/28/2001), the Utah Court of Appeals affirmed the denial of unemployment compensation benefits, ruling that regardless of whether Guzman and King had specific notice that transmission of the e-mails could result in their immediate discharge, Autoliv had just cause to terminate them for flagrantly

violating a universal standard of workplace conduct and exposing the company to the risks of sex discrimination and harassment claims.

Termination of Unionist Employee Who Left Work Early Is Not an Unfair Labor Practice

Thomas Fell worked in the parts department of the Tom Rice Buick automobile dealership and was a member of Service Employees International Union Local 355. After working for five years, Fell asked the parts department manager for a raise. The manager said that Fell would have to quit the union to get a raise and later said that the dealership's President wanted to fire Fell because he was in the union. The next month, at around 4:30 p.m., Fell received an emergency phone call from his 13-year-old son, who asked to be picked up from school after volleyball practice. The school building was closed, the coach had left, and the boy was upset at being left alone as gunfire broke school windows the prior week. Fell was the only worker in the parts department, and was supposed to keep the department open until 5:00 p.m. Under the circumstances, he decided to close and leave early. On his way out, a manager approached Fell with an irate customer who needed parts. Fell told the manager that he was leaving for a personal reason and left without further explanation. Later that evening, Fell telephoned his own manager and explained the circumstances. The manager told Fell that he had acted properly. Nevertheless, Fell was terminated the following day when he reported for work.

Fell's union filed charges against Rice Buick alleging that the dealership violated the National Labor Relations Act by threatening Fell with discharge, offering him a wage increase as an inducement to quit his union membership, and then discharging him because of his union activities. An administrative law judge found violations in the pre-discharge activities, but not in the actual discharge. In Tom Rice Buick, Pontiac & GMC Truck, Inc. (7/26/2001), a sharply divided NLRB affirmed the judge's decision, ruling that Rice Buick proved that it would have terminated Fell even in the absence of his union activity because he had closed the parts department and left work early without notice to or permission from management knowing that a customer needed parts. The NLRB concluded that by leaving work early, leaving an irate customer in a lurch, and failing to explain his situation to the manager, Fell engaged in misconduct. A minority of the NLRB disagreed, asserting in a strong dissent that the discharge of Fell was illegally motivated by the company's strong anti-union animus and was severe, unlawfully-motivated punishment of a man seeking to do the right thing for his child.

Eleventh Circuit Joins Other Circuits Ruling that Disparate Impact Claims Cannot Be Brought under the ADEA

Florida Power Corporation operated as a publicly regulated electric utility monopoly until 1992, when Congress opened the industry to competition. Wanda Adams and several other employees were terminated by FPC between 1992 and 1996 during a series of reorganizations that FPC stated were necessary to maintain its competitiveness in the newly

deregulated market. Adams and other former employees over the age of 40 filed a class action lawsuit against FPC, claiming that the terminations had a disparate impact against older workers and therefore violated the Age Discrimination in Employment Act. In Adams v. Florida Power Corporation (7/5/2001), the U.S. Court of Appeals for the Eleventh Circuit ruled that both the language and the legislative history of the ADEA indicate that, unlike Title VII, it does not permit disparate impact claims. In so holding, the Eleventh Circuit joined the First, Third, Sixth, Seventh and Tenth Circuits. In contrast, the Second, Eighth and Ninth Circuits have allowed disparate impact claims under the ADEA. Click here for a map of the federal circuits.

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