ROBINSON & COLE LLP
Labor, Employment & Benefits

Common-Law Test, Not Corporate Structure, Determines Who Is An Employee

When Deborah Wells, a bookkeeper for Clackamas Gastroenterology Associates, a medical clinic, filed a lawsuit claiming that the clinic violated the Americans with Disabilities Act, the clinic argued that it was not covered by the ADA because it did not have the 15 or more employees required by the act. To succeed on this defense, the clinic needed to establish that the four physician-shareholders who owned the professional corporation and constituted its board of directors were not employees. The clinic argued that its corporate structure demonstrated that the physician-shareholders were not employees.

In Clackamas Gastroenterology Associates, P.C. v. Wells (4/22/03), the U.S. Supreme Court ruled that courts should apply the common-law test used to distinguish employees from independent contractors in order to determine if the doctors were employees as defined by the ADA. The court further ruled that the extent of control exerted on the individual was the principal guidepost for determining whether the individual was an employee. The court specifically rejected the argument that the corporate structure determined the doctors' status.

Policy of Not Promoting Part-Time Employees Does Not Violate Title VII

Lisa Capruso, an attorney working for Hartford Financial Services, began working on a part-time basis pursuant to an approved flexible work arrangement after the birth of her second child. Sometime later, when her request for a promotion was denied, she resigned, claiming that her manager told her that she was not eligible for promotion because she was not working a full-time schedule. (The company denies it had such a policy.) Capruso filed a lawsuit against the company for sex discrimination. Capruso argued that her decision to work a part-time schedule was a function of her status as a mother, that a reasonable accommodation was required because of her status as a mother, and that the company's alleged policy of not promoting part-time employees unfairly targeted women.

In Capruso v. Hartford Financial Services Group, Inc. (4/10/03), the U.S. District Court for New York rejected Capruso's arguments and granted summary judgment in favor of Hartford Financial Services Group. The court ruled that Title VII does not prohibit discrimination based solely on one's choice to work part-time. It also ruled that Title VII does not require employers to provide a reasonable accommodation to employees who are mothers. Finally, the court found that Capruso failed to demonstrate that the alleged policy of promoting only full-time employees had a disparate impact on women, noting that she failed to provide evidence comparing the promotion rates of women to men and that participation in the flexible work arrangement was purely voluntary.

Company's Prompt Response to Sexual Harassment Complaint Constituted Defense to Lawsuit

When Collette Meriwether reported to her employer, Caraustar Packaging Company, that a co-worker had grabbed her buttock as she left work at the end of a shift and, the following day, stopped her in a hallway and joked about the incident, Caraustar immediately investigated the complaint. At Meriwether's request, Caraustar switched her to another shift so that she would not have to interact with the co-worker. Caraustar suspended the employee in question while it conducted the investigation, and, after concluding that the incidents had occurred, suspended him for an additional five days. Moreover, Caraustar required the employee to review the company's sexual harassment policy and attend harassment prevention training. Finally, Caraustar warned the employee that he would be terminated if he interacted with Meriwether outside his job assignment or if any further harassment complaints were made against him.

Even though Meriwether suffered no additional harassment, she sued Caraustar, claiming that the employee's actions created a hostile work environment and that Caraustar's response was not sufficient. In Meriwether v. Caraustar Packaging Company (4/18/03), the U.S. Court of Appeals for the Eighth Circuit ruled in favor of Caraustar. The court ruled that Caraustar's response to the complaint was prompt and effective as a matter of law, and thus, Caraustar could not be held liable for the harassing employee's actions. The court also ruled that the grabbing incident and subsequent encounter did not rise to the level of severe or pervasive conduct to create a hostile work environment.

Constructive Discharge Is a Tangible Job Action Barring Employer's Affirmative Defense of Prompt Remedial Action

Nancy Drew Suders, a civilian working for the Pennsylvania State Police, sued the state police and three officers, claiming that she had been subjected to a sexually hostile work environment and constructively discharged. The state police raised the affirmative defense that it had taken prompt and effective remedial measures when it learned of her complaint and that Suders had failed to take advantage of the preventative or corrective opportunities it provided. Although it found that there were material questions of fact in dispute regarding the alleged harassment, the trial court granted summary judgment in favor of the police on the grounds that, the state police had proven this affirmative defense.

In Suders v. Easton (4/16/03), the U.S. Court of Appeals for the Third Circuit reversed this decision, ruling that a constructive discharge, when proved, constitutes a tangible employment action. Accordingly, when a plaintiff is able to create a genuine issue of material fact as to a claim of constructive discharge, the employer cannot seek to avoid liability by relying on the affirmative defense. In its decision, the court acknowledged that the Second Circuit (which is comprised of the Connecticut and New York district courts) has held that a constructive discharge is not a tangible employment action.

Employee Entitled to Present Evidence of Alleged Age Discrimination to a Jury

James Rogers was an assistant bank manager at First Union National Bank, when First Union initiated a re-organization that eliminated several positions and created new ones. Rogers was 57 years old at the time. Rogers' position was eliminated and he was invited to apply for some of the newly created positions. Rogers applied for two positions, but was not selected. Rogers filed a lawsuit against First Union, claiming that he was discriminated against because of his age.

In support of his claim, Rogers provided the following evidence: (1) he was asked to disclose his age when he applied for the new positions, (2) a video used in connection with the selection process emphasized youth through the use of young actors; (3) credit for work experience was capped at a relatively low level and (4) First Union's descriptions of the qualities needed for the new positions were closely associated with youth, such as "trainability." First Union denied Rogers' claim and asserted that he was not selected for a new position because of poor performance during the selection process for filling the new positions.

In Rogers v. First Union National Bank (4/16/03) the U.S. District Court for Connecticut ruled that, although it was a "close call," a reasonable juror could conclude from the evidence produced by Rogers that First Union had discriminated against Rogers because of his age. Because there was a genuine issue of material fact as to why First Union did not hire Rogers, the court denied First Union's motion for summary judgment and ruled that Rogers should be allowed to present his age discrimination claim to a jury.

Definition of Personnel Files in CT Now Includes E-Mails and Faxes

On April 29, 2003, Connecticut's Governor John Rowland signed Senate Bill 00378 into law. This bill, now known as Public Act No. 03-5, broadens the

definition of “personnel files” in Connecticut’s Personnel Files Act to include electronic mail and facsimiles. This change is effective October 1, 2003.

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