ROBINSON & COLE LLP
Labor, Employment & Benefits

Direct Evidence Not Necessary To Prove Discrimination in Mixed-Motive Cases

Catharina Costa, the only female warehouse worker and heavy equipment operator at Caesar's Palace Hotel & Casino, received several disciplinary sanctions and was ultimately terminated after participating in a physical altercation with a co-worker. She sued Caesar's Palace for sex discrimination claiming that she had been singled out for harsher treatment than her male co-workers and was otherwise treated less favorably than the men. At trial, the trial court instructed the jury that, if it found that Costa's sex was a motivating factor in Caesar's Palace's treatment of her, it must find in favor of Costa, even if it found that the employer was also motivated by lawful reasons. The jury returned a verdict in favor of Costa.

Caesar's Palace appealed, claiming that, where there are both lawful and unlawful motives for an employer's actions, an employee must produce direct evidence of discrimination. Direct evidence is proof based on personal knowledge or observation, which is generally difficult to obtain in discrimination cases. In Desert Palace, Inc. v. Costa (6/9/03) the U.S. Supreme Court ruled that direct evidence of discrimination is not required in mixed-motive cases.

Employee's Free Speech Rights Limited Inside Employer's Privately Owned Workplace

Matthew Dixon, a dairy mechanic in South Carolina, placed two Confederate flag stickers on his tool box in response to the heated public debate over whether the state should remove the Confederate flag from the state capital dome. His employer, Coburg Dairy, terminated Dixon's employment when he refused to remove the sticker and rejected its offer to buy him a new, unadorned tool box to use at work, asserting that Dixon violated the company's anti-harassment policy. Dixon claimed that his termination violated his free speech rights under the First Amendment to the U.S. Constitution.

The U.S. Court of Appeals for the Fourth Circuit rejected Dixon's claim in Dixon v Coburg Dairy, Inc. (5/30/03). Although the display of a Confederate flag qualifies as speech for the purposes of the First Amendment, the right to free speech is not unfettered. While the First Amendment protects Dixon's right to display the flag in his home or on his car and to participate in rallies on public property, it does not extend to bringing the flag into his employer's privately owned workspace.

ADA Does Not Require Employers To Keep Employees on Indefinite Leave

While Samuel Crano, a packer inspector for Graphic Packaging Corporation, was on an indefinite medical leave for treatment of liver disease, GPC eliminated the packer inspector position. After Crano had been on medical leave for almost two years, he was cleared to work on a restricted basis; however, when he contacted GPC about returning to work, he was informed that the packer inspector position had been eliminated and that, under GPC's continuous leave policy, his employment with the company had ended when his leave extended beyond one year. Crano sued GPC under the Americans with Disabilities Act, claiming that GPC had unreasonably failed to accommodate his disability. In particular, Crano argued that GPC should have made an exception to its continuous leave policy by keeping him as an employee even though his leave extended past one year as a reasonable accommodation to his disability. In Crano v. Graphic Packaging Corporation (6/5/03), however, the U.S. Court of Appeals for the Tenth Circuit rejected this argument and ruled that the ADA does not require employers to maintain an employee on indefinite leave while reserving a job opening for his or her possible return.

Time Spent Obtaining Safety Gear Is Not Compensable under FLSA

The employees at Barber Foods, a poultry processing plant, are required to wear lab coats, hairnets, earplugs, safety glasses, and other safety gear. Seven current employees and thirty-seven former employees sued Barber Foods claiming violations of the wage payment laws and seeking compensation for allegedly unrecorded and unpaid work. At trial, the jury concluded that, although putting on and taking off the safety gear was an integral part of their employment, the time actually spent donning and doffing the gear was de minimus and, thus, not compensable. Accepting this part of the verdict, the employees nonetheless appealed to the U.S. Court of Appeals for the First Circuit, arguing that they were entitled to be compensated for the time spent walking from the area where they obtain the gear to the time clocks, as well as the time spent waiting in line to receive the gear. In Ihum v. Barber Foods, Inc. (6/3/03), the appeals court ruled that neither the walking time nor the waiting time was compensable.

WARN Act Can Be Triggered by Series of Small Layoffs

The Worker Adjustment and Retraining Notification Act requires employers to provide employees with at least 60-days' advance notice of plant closings and mass layoffs. Under the WARN Act, a "mass layoff" occurs when a reduction in force that is not the result of a plant closing results in an employment loss at a single site of employment during any 30-day period for (1) at least 500 full-time employees or (2) at least 33% of the full-time employees and at least 50 full-time employees. In 2002, Arthur Anderson engaged in several relatively small reductions in force, none of which met these criteria. Thus, Arthur Anderson argued that it was not required to provide the 60-days' notice to its employees under above two parts of the WARN Act.

In Roquet v. Arthur Anderson (5/27/03), however, the U.S. District Court for Illinois ruled that Arthur Anderson's reductions in force qualified as a "mass layoff" under the WARN Act's third definition of a "mass layoff." Under that part of the WARN Act, a "mass layoff" also may occur when a company has two or more layoffs in a 90-day period, which result in the termination of at least 500 full-time employees or at least 33% of full-time employees and at least 50 employees. Because Arthur Anderson terminated more than 500 employees in a 90-day period, it violated the WARN Act by failing to provide the 60-day advance notice to the affected employees.

Connecticut Public Act No. 03-45 Establishes New Rules for Smoking Areas in the Workplace

Pursuant to Public Act No. 03-45 (which amends Connecticut General Statute §31-40q) every employer with five or more employees must prohibit smoking in any business facility under the employer's control, except in specially designated smoking rooms. Although an employer is not required to provide smoking rooms for its employees, if it chooses to do so, it must also provide sufficient nonsmoking break rooms for nonsmoking employees. The smoking room must meet the following requirements: (1) the air from the smoking room must be exhausted directly to the outside and no air from such room may be circulated to other parts of the building; (2) the employer must comply with ventilation standards established by federal laws; (3) the room shall be located in a non-work area, which no employee is required to enter as part of his or her work responsibilities (except for custodial or maintenance work carried out in the smoking room when it is unoccupied); and (4) the room must be for the use of employees only. This Act takes effect October 1, 2003.

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