ROBINSON & COLE LLP
Labor, Employment & Benefits

Court Rules that Health Benefits Are Vested but Retirees Are Not Entitled to Exact Same Health Benefits under their Collective Bargaining Agreements

In Poole v. City of Waterbury (9/30/03) the Connecticut Supreme Court ruled that a group of 114 retired firefighters for the City of Waterbury and their widows had vested rights to medical benefits under the collective bargaining agreements in effect at the time the firefighters retired but did not have vested rights in the exact same health plans in effect at that time.

The court recognized that, when construing retiree benefit provision in collective bargaining agreement, some courts presume vesting for life and shift the burden to the employers to disprove vesting while other courts presume the benefits are not vested and shift the burden to the retirees to prove the benefits are vested. The court rejected both presumptions. Instead, the court applied standard rules of contract interpretation to determine whether the City and the firefighters intended to provide vested medical benefits for the retirees and, if so, whether the retirees had vested rights in the exact same plans in effect at the time of their retirement.

In construing the bargaining agreements, the court noted that the language showed that the health benefits could be modified over time. But the court ruled that any modifications to the plans could not substantially alter the health benefits to the group of retirees. The court determined that the changes imposed by the City, converting the retirees from an old indemnity plan to a modern preferred provider managed care plan, were not substantial. Therefore, the court ruled that the City properly converted the retirees from the indemnity-type plans in effect at the time of retirement to more efficient preferred provider plans.

R&C attorneys Rick Vitarelli and Stephen Aronson represented the Waterbury Financial Planning and Assistance Board, the state agency charged with remedying the fiscal problems suffered by the City, at the trial and Linda Morkan, Rick and Steve successfully represented the Board on the appeal.

Epilepsy Is Not a Disability under the ADA

After working at Goodyear Tire for a year, Brian Brunke was diagnosed with epilepsy. During a two-year period he suffered two seizures at work and, as a result of medical restrictions, Brunke was temporarily transferred to a less demanding position. After a determination by his physician that his epilepsy was under control, Brunke was restored to his original job. He then began to engage in heated confrontations with co-workers. These confrontations earned him warnings and suspensions, and eventually led to his termination. Prior to Brunke's discharge, Goodyear consulted its medical personnel who indicated that the belligerent conduct was not related to the epilepsy. Brunke sued Goodyear under the Americans with Disabilities Act, claiming he was discharged because of his disability (epilepsy) and perceived disability (emotional instability). After the claim was dismissed by the trial court, Brunke appealed. In Brunke v. Goodyear Tire and Rubber Company (9/29/03), the U.S. Court of Appeals for the Eighth Circuit upheld the dismissal. The court noted that just having an impairment does not make a person disabled for purposes of the ADA and found that Brunke had not shown that his epilepsy substantially limited any major life activity at the time of his discharge. Therefore, he was not disabled for purposes of the ADA. As to the emotional instability claim, the court ruled that poor judgment and quick temper are not included in the ADA's definition of impairment if those traits are not symptoms of a mental or psychological disorder.

Employer's Awareness of Employee's Health Condition Together with Pressure to Return to Work is Enough for Negligent Infliction of Emotional Distress Claim

Jennifer Copeland was employed as an intake nurse for Home and Community Health Services. After her relationship with her supervisor became strained, Copeland began to experience anxiety and frequent headaches. Copeland requested a transfer, but before her request was processed, she was diagnosed with depression and obsessive compulsive disorder. Copeland requested leave under the federal Family and Medical Leave Act and submitted the requisite health certification form to HCHS. Within two weeks and while on leave, Copeland learned that her transfer request was denied. She was then informed by HCHS that unless she returned to work under the same supervisor by the following week, HCHS would hire a replacement. HCHS also asked Copeland to submit her resignation if unable to return by the requested date. After her employment was terminated, Copeland sued HCHS for violation of the FMLA and negligent infliction of emotional distress. In Copeland v. Home and Community Health Services, Inc. (9/29/03), the U.S. District Court for Connecticut rejected HCHS's motion to dismiss the negligent infliction claim. Ruling that an employee does not need to allege outrageous and extreme conduct, the court found that the allegations that the employer was aware of the existence of Copeland's health problems, the inflexibility about her return to work, together with the threats concerning the hiring of Copeland's replacement were sufficient to defeat the HCHS's motion.

Mere Existence of English Language Policy Does Not Necessarily Discriminate against Bilingual Employees

After her discharge by the Salvation Army, Iris Cosme sued her former employer for national origin discrimination. In her claim, Cosme, a native of Puerto Rico whose primary language was Spanish (and whose command of English was limited), challenged the Salvation Army's English language policy. The policy required employees to use English "to the employee's ability" whenever speaking to co-workers, supervisors or customers. Exceptions to the policy applied if the employee was on a break or meal period or was conversing with a customer or acting as an interpreter for a supervisor, co-worker or customer. Cosme's supervisor, Pamela Gnerre, began to enforce the policy after receiving complaints from non-Spanish-speaking employees and customers about feeling excluded and uncomfortable. After Cosme repeatedly refused to speak English at Gnerre's request on three separate occasions, she was terminated. The Salvation Army countered that Cosme's conduct constituted insubordination and also pointed to Cosme's tardiness as a further reason for her termination (she had received several warnings about her attendance-related infractions). In Cosme v. The Salvation Army (9/23/03), the U.S. District Court for Massachusetts dismissed the claim. The court found that, unlike a person who did not speak English, since Cosme was bilingual, she was not adversely impacted by the language policy. The court concluded that Cosme failed to show that the reasons given for her termination were pretextual, finding her refusal to follow Gnerre's directives was, indeed, insubordination and noting that non-Spanish-speaking employees had also been discharged both for insubordination and tardiness.

Despite Need for Continued Medical Treatment, Employee was not "Totally Disabled" under LTD Plan

Nancy Matías-Correa, employed as a machine operator for Pfizer for ten years, applied for and was granted disability benefits under the Pfizer's long term disability benefits plan due to her low back pain syndrome, radiculopathy and depression. Under the terms of the LTD plan, to be eligible for benefits, an employee had to be totally disabled. For the first two years, a participant was deemed totally disabled if "unable to perform the basic duties of her occupation and is not involved in any other gainful occupation." However, after two years, a participant was considered totally disabled –and eligible for benefits—only if "unable to work in an occupation or job for which she is qualified or may be qualified based on her academic background, training or experience." After Matías-Correa had received benefits for the first two years, the plan administrator, Medical Card Systems, requested evidence of her total disability. The evidence showed that, although still in need of medical treatment, Matías-Correa could perform sedentary work during an eight-hour workday with sufficient periods of rest. MCS then concluded that Matías-Correa was not totally disabled as defined by the plan and discontinued her benefits. Matías-Correa then filed a lawsuit alleging that the termination of her disability benefits violated the Employee Retirement Income Security Act. In Matías-Correa v. Pfizer, Inc. (9/25/03), the U.S. Court of Appeals for the First Circuit upheld the decision of the trial court dismissing the case. The court ruled that the language in the plan granted MCS discretionary authority to determine eligibility and any eligibility challenge had to be reviewed under the "arbitrary and capricious" standard. Given the medical

information available to MCS, the court found that there was substantial evidence supporting MCS's decision to deny benefits.

Delaying Notice of Termination Allows Employee to Seek FMLA Protection

Daniel Arban worked for West Publishing as a field sales representative. During his employment with West, Arban (who had a documented history of gastrointestinal problems) received warnings about violations of company policy and customer complaints. His conduct, which was not disputed, included failure to follow up, switching names of accounts, sending orders without signatures, signing up customers for services without prior approval, and adding products to orders without customer permission. His supervisor, the Regional Sales Manager, Robert Wolfe, concluded that Arban's conduct warranted termination, but sought input from colleagues and supervisors. Supervisors agreed with the decision to terminate, but decided to postpone the notice until after the holidays. Wolfe accompanied Arban on a sales outing in December, and prepared a "Recap Report" which commented favorably on Arban's performance. Two days later, Arban was diagnosed with "anxiety reflux" and his physician agreed with Arban's suggestion that he should take time off work. His leave commenced on December 25. While on leave, Arban was repeatedly contacted by Wolfe who insisted that Arban perform work-related tasks. Citing his doctor's recommendation to stay off work, Arban refused. Under pressure from Wolfe, Arban eventually submitted his resignation. Six months later, Arban sued West for violation of the federal Family and Medical Leave Act. After trial, the jury found that West had interfered with Arban's right to FMLA leave and awarded him over $220,000, including attorney's fees and costs. InArban v. West Publishing Company (9/24/03), the U.S. Court of Appeals for the Sixth Circuit affirmed the jury verdict. Although acknowledging that West had considered terminating Arban before he made his FMLA request, the court held that there was enough evidence for the jury to conclude that the real reason for the discharge was his taking FMLA leave.

Robinson & Cole LLP Announces the Opening of its New Office in Sarasota, Florida

We are pleased to announce the opening of R&C's Sarasota, Florida office. The office, located at 1800 Second Street, Suite 965, W. Sarasota, Florida 34236, will be anchored by Rebecca Levy-Sachs. Ms. Levy-Sachs focuses her practice on complex commercial property insurance coverage, subrogation and commercial business litigation. The telephone number for our Sarasota office is (941) 330-0822. Ms. Levy-Sachs may also be reached atRebecca Levy-Sachs.