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Labor, Employment & Benefits

Connecticut's Disability Discrimination Law Differs from ADA, Says Second Circuit

In Beason v. United Technologies Corporation (7/21/03), the U.S. Court of Appeals for the Second Circuit answered two questions (1) whether the Connecticut Fair Employment Practices Act's definition of disability differs substantively from the Americans with Disability Act's definition of disability, and (2) whether the CFEPA provides a cause of action for perceived or "regarded as" disability discrimination.

The court determined that the definition of disability under the CFEPA does differ substantively from the ADA's definition of disability, in that the state law does not include the ADA's requirement that a physical disability "substantially limit a major life activity." The court based its conclusion on the plain text of the Connecticut statute, as well as the legislative history of the Connecticut law, which was drafted after the language that ultimately formed the basis of the ADA's definition. Accordingly, the Connecticut Legislature could have adopted the "substantially limits one or more major life activities" requirement but chose not to. Without such a requirement, the court found that the Connecticut law was intended to be broader than the ADA.

With respect to whether the CFEPA includes a cause of action for an individual "regarded as" having a disability, the Second Circuit concluded that the Connecticut statute does not include such a cause of action. The court based its conclusion on the fact that CFEPA makes no mention of the cause of action for "regarded as" discrimination, and the fact that other Connecticut statutes do include similar language. The court's ruling is contrary to the position taken by the Connecticut Commission on Human Rights and Opportunities, which has consistently issued administrative decisions that the CFEPA implies a cause of action for "regarded as" disability discrimination. The CHRO filed an amicus brief in the case to support its position, which the court considered and rejected.

Chevron's "Direct Threat" Assessment Rejected as Not Based on Best Available Medical Information

Mario Echazabal worked for a maintenance contractor at Chevron's oil refinery. Echazabal applied to work directly for Chevron in the same unit. Chevron extended him an offer, contingent on passing a physical examination. An examination by two Chevron physicians revealed an abnormality in Echazabal's liver function and Chevron concluded that Echazabal's health might be at risk from exposure to chemicals present in the unit. Chevron rescinded its offer. In addition, Chevron asked the maintenance contractor to remove Echazabal from the refinery or place him in a position that would eliminate his exposure to solvents or chemicals. As a result, the contractor terminated Echazabal. Echazabal sued both Chevron and the contractor, alleging violation of the Americans with Disability Act.

In Echazabal v. Chevron U.S.A., Inc. (7/23/03), the U.S. Court of Appeals for the Ninth Circuit heard the case on a remand from the U.S. Supreme Court. Chevron defended its decision based on the fact that Echazabal's employment posed a direct threat to his own health and safety, a defense available to employers under the ADA. The Ninth Circuit held that Chevron failed to prove that Echazabal was a direct threat to himself because it did not base its decision on the best available medical information. In particular, the physicians whom Chevron relied upon had no special expertise in liver disease and were contradicted by doctors who did have such expertise. In addition, the Ninth Circuit concluded that Chevron failed to apply the applicable direct threat standard to assess the potential risk to Echazabal, which requires an individualized assessment of (1) the duration of the risk, (2) the nature and severity of the potential harm, (3) the likelihood of the potential harm, and (4) the imminence of the potential harm. The dissent criticized the decision for placing unreasonable pressure on employers to prove an employee poses a risk of a direct threat.

Employer-Selected Arbitrator Pool Defeats Neutrality and Renders Arbitration Agreement Unenforceable

Wendy McMullen worked as a security guard for Meijer, Inc. After inappropriately confronting a juvenile shoplifter in Meijer's parking lot, McMullen was provided with the option of either being terminated or demoted. McMullen elected to be terminated and subsequently challenged the decision to discipline her under Meijer's termination appeals process, which requires arbitration of the dispute. The arbitration agreement provided Meijer with exclusive control over the pool of arbitrator candidates. McMullen sued seeking a declaratory judgment that the arbitrator selection process was unfair.

In McMullen v. Meijer, Inc. (7/25/03), the U.S. Court of Appeals for the Sixth Circuit ruled that the arbitration agreement was unenforceable because it granted Meijer exclusive control over the selection of the pool of arbitrators. Although other aspects of the agreement were "even-handed," the court found that the pool of potential arbitrators selected by Meijer may be biased in favor of Meijer. The court concluded that the arbitration agreement was not an effective substitute for a judicial forum because it inherently lacked neutrality.

Manager Performing General Work Did Not Defeat FLSA Exemption

Terri Jones, a manager at a Dairy Queen, spent a majority of her time doing hourly, line work, such as cooking, cleaning the restaurant, and working the cash register. However, she also performed management responsibilities such as hiring, supervising and firing employees, handling customer complaints, dealing with vendors, and completing paperwork. Dairy Queen classified Jones as exempt from the overtime requirements of the Fair Labor Standards Act as an executive employee.

In Jones v. Virginia Oil Company, Inc. (7/23/03), the U.S. Court of Appeals for the Fourth Circuit agreed with Dairy Queen, holding that Jones's $585 a week salary and her supervisory responsibilities qualified her as a "bona fide executive." Noting that many courts have rejected the "time" factor of the test for an executive exemption, the court found that Jones performed her management responsibilities often simultaneously with her line work. In addition, the Court weighed the relative importance of Jones' managerial duties to the restaurant's operation, which outweighed her non-managerial duties. Accordingly, the court determined that Jones was properly classified as exempt from the FLSA's overtime requirements.

Casino Pays $1.5 million To Settle "English-Only" Lawsuit

In 1998, Colorado Central Station Casino, Inc., implemented a blanket English-only language policy in the housekeeping department. The housekeeping department had a high concentration of Hispanic employees, some of whom were monolingual Spanish speakers. The reason given for implementing the English-only policy was that a non-Spanish speaking employee thought that other employees were talking about her in Spanish and the policy was necessary for "safety reasons." According to the employees, several supervisors chastised them for speaking Spanish any time, shouting "English English" at the Hispanic employees when encountering them speaking Spanish in the halls, resulting in the Hispanic employees being embarrassed and suffering emotional distress.

The employees filed a class action lawsuit under Title VII with the U.S. Equal Employment Opportunity Commission and later the U.S. District Court for the District of Colorado. According to an EEOC Press Release (7/18/03), the parties agreed to settle the case for $1.5 million. According to the EEOC, the settlement "should send a strong message to employers in Colorado and across the country that we expect companies to think long and hard before implementing rules that may discriminate against those who speak languages other than English."

Applebee's Settles Rare "Dark Skin" Color Harassment Lawsuit

The U.S. Equal Employment Opportunity Commission announced in a Press Release (8/7/03) that it has settled a rare color harassment and retaliation lawsuit filed under Title VII against Applebee's Neighborhood Bar & Grill, an international restaurant chain. Under the settlement, Applebee's agreed to pay $40,000 to Dwight Burch, an African American former employee, who alleged that he was discriminated against on account of his dark skin color by a light skinned African American manager and that he was terminated in retaliation for complaining to corporate headquarters. The EEOC noted that, prior to the settlement, Applebee's did not have any written policy that prohibited discrimination based on skin color. The EEOC also noted that color discrimination charges have increased by more than 200% since the mid-1990s.