ROBINSON & COLE LLP
Labor, Employment & Benefits

Negative Performance Evaluation Was Not Adverse Employment Action

Evelyn Sanders, an African-American woman, worked for the New York City Human Resources Administration. After working there for nine years, she was given a new job supervised by a white male. She complained that her supervisor removed her from a supervisory position and replaced her with a white male and that he held meetings exclusively with male staff members. After Sanders complained, her supervisor gave her a negative performance evaluation. The negative evaluation remained in her file for two weeks before it was removed. Sanders sued the NYCHRA for race and gender discrimination and retaliation in violation of Title VII. A jury ruled in favor of the NYCHRA, and Sanders appealed. In Sanders v. New York City Human Resources Administration (3/16/04) the U.S. Court of Appeals for the Second Circuit determined that Sanders' negative performance evaluation was not an adverse employment action and affirmed the verdict. The court noted that an adverse employment action requires a "materially adverse change" in the terms and conditions of employment. The court noted that, to be materially adverse, a change in working conditions must be more disruptive than a mere inconvenience. The court listed possible adverse employment actions: termination of employment, a demotion with a decrease in compensation, a less distinguished title, a material loss of benefits, significantly diminished responsibilities, or other indicia unique to the employee's situation. In ruling that the negative evaluation was not an adverse employment action, the court noted that Sanders failed to show that the evaluation had any effect on the terms and conditions of her employment.

Possibility of Criminal Indictment Does Not Trigger WARN Act Notice

In Roquet v. Arthur Andersen LLP (3/22/04) the U.S. District Court for Illinois ruled that the financial collapse of the accounting firm Arthur Andersen was not foreseeable and did not require a 60-day notice under the Worker Adjustment and Retraining Notification Act before laying off employees. The court noted that media reports predicted that Arthur Andersen might not survive a pending Securities and Exchange Commission investigation, especially following rumors that employees had disposed of or deleted documents related to Enron Corporation. The court also noted that the Department of Justice stated that it might seek indictments against Arthur Andersen. Nevertheless, the court ruled that, although the firm was aware that there were problems before the layoffs, it did not make good financial sense to give WARN Act notices without more proof that an indictment and potential financial collapse might occur. The court reasoned that there was no way to predict when or if the indictment would actually occur. As a result, Arthur Andersen was not required to give a WARN Act notice before conducting mass layoffs.

Employee Terminated after Eight Years of Disability Leave Wins Rehabilitation Act Case

Sandra Sutton, who worked as a clerk for the U.S. Postal Service, developed allergies from dusty conditions at her work station. After several years, she was transferred to a new facility and, later that day, she suffered a serious allergic reaction. She went home and never returned to work. Over the next year, Sutton submitted medical reports, requested a transfer to a dust-free environment, and applied for other positions that were free from dust. After five years, the Postal Service offered her a limited-duty position as a clerk with a clean air machine near her work area. She rejected the offer after her doctor determined that the clean air machine would not accommodate her condition. Under Postal Service regulations, a disabled employee's rejection of a job offer triggers a suitability review in which the Postal Service would investigate whether the position offered would accommodate the employee. However, the Postal Service did not conduct the suitability review. Three years later, the workers' compensation office told Sutton it did not consider her too disabled to work and cut her disability benefits. Sutton did not return to work when scheduled. Rather, she requested an additional 30 days of unpaid leave. She did not work for the next 16 months, instead calling in sick and requesting additional unpaid leave. The following year, the Postal Service sent Sutton a letter giving her the option to resign, retire, or accept disability retirement. Sutton filed a complaint charging the Postal Service with failing to accommodate her medical restrictions.

In Sutton v. Potter (3/19/04) the U.S. District Court for Illinois ruled that the Postal Service violated the Rehabilitation Act by failing to engage in an interactive process to identify whether a new position existed that would not aggravate Sutton's allergies and by stopping her disability benefits without conducting a proper review. In a final comment, the court chastised the Postal Service for sleeping through nearly eight years of Sutton collecting disability, at government expense, and that, once awakened from its slumber, for taking such woefully inadequate actions as to suggest a total lack of effort on its part to comply with the statutory requirements of the Rehabilitation Act.

Lump Sum Retirement Incentive Plan Found Not Subject to ERISA

In White v. Bell Atlantic Yellow Pages (3/23/04) the U.S. District Court for Massachusetts determined that a retirement incentive plan that provided a lump sum amount based on age and length of service was not governed by the Employee Retirement Income Security Act. Six retired sales representatives of Bell Atlantic claimed that Bell Atlantic violated its fiduciary duties under ERISA by misrepresenting that the incentive plan was one-time offer. For participants who elected to accept the plan and retire, the incentive plan added six years to the participant's age and length of service for calculating pension benefits under the company's pension plan. After the six employees accepted the benefits under the plan, the company offered a retirement incentive plan with an additional incentive the following year. The court ruled that the retirement incentive plan did not satisfy ERISA's requirement of an ongoing administrative scheme since the program simply provided a one-time incentive for employees who wished to retire early. The court also found that the plan did not create a scheme for individualized discretionary determinations of the eligibility of the employees for these retirement benefits. As a result, the court dismissed the employees' claims.

ERISA Does Not Preempt Claim that Health Plan Wrongfully Terminated Coverage for Nonpayment

In Crawley v. Oxford Health Plans, Inc. (3/12/04) the U.S. District Court for Connecticut ruled that the Employee Retirement Income Security Act did not preempt, and thus provide a basis for federal court jurisdiction, a state law wrongful termination of coverage claim filed in state court. John Crawley was a former employee of Times Mirror Magazines where he participated in an ERISA-governed health insurance plan for which Oxford provided benefits. After he terminated his employment and following expiration of his COBRA benefits, Crawley converted his coverage to an individual policy. Crawley claimed that he made payments under the policy for August, September, and October 2002. According to Crawley, Oxford claimed he did not pay for September and, in response, terminated his coverage at the end of August and refunded his October payment, less his claims incurred after August. Crawley sued Oxford in state court alleging it wrongfully terminated his policy. Oxford removed the lawsuit to federal court, arguing that Crawley's claim was preempted by ERISA. In remanding the claim back to the state court, the federal court found that his individual policy with Oxford involved a separate relationship between them that is neither administered nor regulated by his former employer or by an ERISA plan administrator. The court explained that Times Mirror's benefit plan, the COBRA continuation coverage, and the conversion rights are all governed by ERISA; however, after the conversion, the new relationship between Crawley and Oxford did not display the continuing administrative and financial obligations that implicate ERISA.

Statute of Limitations for Rhode Island Civil Rights Act Is Expanded to Three Years

In Rathbun v. AutoZone, Inc. (3/18/04) the U.S. Court of Appeals for the First Circuit ruled that the appropriate statute of limitations for the Rhode Island Civil Rights Act is three years, not one year as the lower court had previously found. The appeals court noted that RICRA was similar to Section 1981 of the federal Civil Rights Act. Neither required the exhaustion of any administrative remedies before filing a lawsuit. The lower court had analogized RICRA to the state's Fair Employment Practices Act. However, the appeals court determined that RICRA was not like FEPA, which was similar to Title VII because both required

administrative agency involvement. Although the court granted summary judgment and dismissed Rathbun's claims, the appeals court acknowledged that expanding the statute of limitations from one to three years may increase the number of potentially actionable claims.

Slapping Buttocks Does Not Establish Sexual Harassment Claim under Title VII

In Perez v. Norwegian American Hospital Inc. (3/5/04) the U.S. Court of Appeals for the Seventh Circuit determined that a hospital supervisor, who was slapped an employee on her buttocks, did not establish sexual harassment, sex discrimination, or retaliation in violation of Title VII. The trial court dismissed Perez's claim, comparing the buttocks slap to an "expression of camaraderie -- not unlike that observed on national television between athletes, with no intended or perceived sexual connotation." However, on appeal, the Seventh Circuit stated that it disagreed with the trial court's suggestion that a slap on the buttocks is somehow comparable to the gesture of athletes who are encouraging each other. The appeals court also expressed its disagreement with the trial court's suggestion that the slap might not have been sexually-based conduct. Nevertheless, the court found that the buttocks slap was not objectively abusive and, in the absence of any other evidence showing harassment, the court dismissed Perez's claim.

Supervisor who Orchestrated Employee's Termination Liable for Religious Discrimination

Donald Reed was a member of the Worldwide Church of God, which required him to refrain from working between sundown on Friday and sundown on Saturday. He worked for the Federal Aviation Administration, which accommodated his religious practices. After two years, Reed began working for a new manager. After Reed informed his manager of his religious practices, his manager asked him about his religious beliefs and hours of work, frequently asked him to complete projects on Saturdays, quizzed him about how he would be affected if his position was eliminated, threatened to remove him from his position, and then converted his position to a temporary position with one-year term. Reed requested an accommodation, which was denied, and swapped his shift with other employees in order to meet his religious obligations. Reed's supervisor also called Reed's religion a scam, after he learned that Reed had traveled on a Saturday, and contacted Reed's minister to discuss his religious beliefs. Reed's supervisor then scheduled Reed to work six consecutive Saturdays. After Reed was unable to make arrangements and failed to show up for work on five of those six Saturdays, he was terminated.

Reed filed a lawsuit against the FAA alleging religious discrimination, failure to accommodate, and retaliation under Title VII. A jury returned a verdict awarding Reed $1.5 million in compensatory damages, nearly $250,000 in back pay, and over $500,000 in front pay. The court reduced the compensatory damages award to the $300,000 statutory cap and decreased the front pay award to $440,000. The court denied Reed's application for prejudgment interest. Both parties appealed.

In Reed v. Mineta (3/12/04) the U.S. Court of Appeals for the Tenth Circuit upheld the nearly $1 million judgment in favor of Reed, agreeing that Reed's supervisor orchestrated the situation leading to Reed's absences and, ultimately, his termination.

This is an archive of past issues. As a result, it may contain information that is not current.