ROBINSON & COLE LLP
Labor, Employment & Benefits

Employee whose Impairment Is Substantially Controlled by Medication Is Not Disabled under the Rehabilitation Act

Marsha Lynne Coleman-Adebayo filed a lawsuit against the U.S. Environmental Protection Agency, claiming that the EPA violated the Rehabilitation Act by refusing to allow her to work from her home as a reasonable accommodation to her disability. In support of her claim, Coleman-Adebayo offered evidence that working in the office exacerbated her hypertension; however, Coleman-Adebayo explicitly denied that she was substantially impaired in the major life activity of working. Coleman-Adebayo acknowledged that her hypertension was controllable by medication except for when she was forced to work in the office. In Coleman-Adebayo v. Leavitt (7/26/04), the U.S. District Court for the District of Columbia dismissed her claims, concluding that Coleman-Adebayo was not disabled under the Rehabilitation Act because her impairment was largely corrected by medication. Coleman-Adebayo was unable to salvage her claim by offering evidence that she suffered from other illnesses because there was no evidence that the other illnesses prevented her from working at the office.

Office Manager Fired after Her Daughter Threatened a Lawsuit against the Employer Can Pursue Wrongful Discharge Claim

Gail Fortunato was the business manager for a dental office owned by Dr. Nicolas Cucharale. Cucharale performed a dental procedure on Fortunato's adult daughter that left the daughter unsatisfied and contemplating a malpractice claim. Shortly thereafter, Fortunato's employment was terminated. Fortunato sued, claiming that she was wrongfully discharged in retaliation against her daughter's exercise of her constitutional right to access the judicial system. InFortunato v. Silston (6/23/04), the Connecticut Superior Court ruled that Fortunato stated a valid claim for wrongful discharge in violation of public policy, that "the public policy violation lies in the discharge of one whose close relative's legal recourse is sought to be chilled or avenged by retaliation." The court dismissed Fortunato's claims that the discharge also violated the Connecticut Unfair Trade Practices Act and interfered with her constitutional right of freedom of association.

Taking a Magazine from a Customer's House Does Not Constitute Just Cause for Termination

When a Metropolitan District Commission employee admitted to taking a magazine from a customer's house, after first denying it, the MDC discharged her for theft and lying. The union filed a grievance on behalf of the employee and the issue was arbitrated. The arbitration panel ruled that the penalty of termination of employment was disproportional to the wrongdoing, particularly because the magazine did not have any special value. Accordingly, the panel ordered the employee to be reinstated without back pay. The MDC filed a lawsuit trying to vacate this award, arguing that there is an explicit public policy against theft, and thus, it had just cause to terminate the employee's employment. InMetropolitan District Commission v. AFSCME (6/15/04), the Connecticut Superior Court upheld the arbitration award. Its decision that termination was not appropriate was based largely on the fact that the employee was never charged or convicted of a crime and that the employee returned the magazine to the customer.

Court Relies on the Revised (and Not Yet Effective) FLSA Regulations in Ruling that Auto Claims Adjusters Are Non-Exempt

In Robinson-Smith v. Government Employees Insurance Company (7/1/04), the U.S. District Court for the District of Columbia relied on the revised Fair Labor Standards Act regulations in deciding that automobile claims adjusters for GEICO did not meet the criteria for the administrative exemption, and thus were entitled to overtime. Acknowledging that the revised regulations will not take effect until August 23, 2004, the court concluded that the new regulations are instructive with respect to the Department of Labor's interpretation of the requirements of the administrative exemption, noting that "the general criteria for employees employed in a bona fide administrative capacity are essentially the same under the August 2004 Regulations as under the current regulations."

Although some claims adjusters may qualify under the administrative exemption, the court concluded that GEICO could not prove that the auto claims adjusters' primary duty includes the exercise of discretion and independent judgment because "the vast majority of the adjusters' work consists of using their training and skills to assess the value of the damage to the vehicle in accordance with the standards laid out by GEICO."

At-Will Employee whose Job Offer Was Rescinded before She Started Work Can Sue the Employer

While Sherie Goldstein was working as a temporary employee assigned to work on a special project for Unilever, Unilever extended to her an offer of full-time employment. Goldstein accepted the offer, resigned from employment with the temporary agency, and reported to work for Unilever. When she arrived at Unilever for her first day as a Unilever employee, however, she was told that Unilever was rescinding the offer because she was not qualified for the job. Goldstein filed a lawsuit against Unilever, claiming promissory estoppel, negligent misrepresentation, and intentional misrepresentation. As part of its defense, Unilever argued that Goldstein could not pursue her lawsuit because she had been offered a job as an employee-at-will. Unilever argued that, because an employer can terminate an employment-at-will relationship at any time, it also had a right to terminate the relationship before it commenced.

In Goldstein v. Unilever (5/3/04), the Connecticut Superior Court ruled that Goldstein had stated legally valid claims against Unilever. Specifically, the court ruled that, even though the law may allow an employer to discharge an employee the day after beginning work, an employer that rescinds a job offer before the employee starts work may be subject to a claim of promissory estoppel. In distinguishing between the two situations, the court specifically noted that an employee who has been discharged the day after starting work may be eligible for unemployment compensation and, possibly, COBRA benefits, whereas a prospective employee who learns that the promised job offer has been rescinded will not qualify for such benefits. The court also ruled that Goldstein could pursue her misrepresentation claims, which were based on the allegation that Unilever made the job offer knowing that it never intended to employ her.

Ellerth/Faragher Standard Applies to Whistleblower Claims under the Energy Reorganization Act

Several production technicians at a plant owned and operated by Mason & Hanger Corporation complained to their supervisors that members of a team working on the disassembly of a specific type of outdated nuclear weapon were not following proper safety procedures. According to the technicians, their complaint caused their team members to become very hostile toward them and led to several workplace conflicts between the group that had made the complaint and the other members of the team. Relying on the provision of the Energy Reorganization Act of 1974 that prohibits employers from discriminating against any employee because the employee engaged in whistle-blowing activity, the technicians filed a hostile work environment claim against Mason in an administrative proceeding before the U.S. Department of Labor. After the administrative review board ruled in favor of the employer, the technicians appealed the decision to the U.S. Court of Appeals for the Fifth Circuit.

In Williams v. Administrative Review Board (7/15/04), the appeals court decided that whistleblowers can bring a hostile work environment claim under the ERA, even if they have not suffered a tangible job action. The court also concluded that the standard for analyzing claims of hostile work environment in sexual harassment claims, set forth by the U.S. Supreme Court in the Burlington Industries v. Ellerth and Faragher v. City of Boca Raton cases, should be applied to hostile work environment claims brought by whistleblowers under the ERA. Applying this standard, the appeals court ruled that the technicians had failed to take

advantage of the preventive measures established by Mason and that Mason did everything reasonably possible to prevent harassment and to remedy the situation when it became aware of the problem. Accordingly, the appeals court dismissed the technicians' claims.

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