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Labor, Employment & Benefits

Transsexual College Faculty Member Permitted to Proceed to Trial on Title VII Sex Discrimination Claim Stemming from College's Prohibiting Her from Using the Women's Bathroom

Rebecca Kastl was an adjunct faculty member at Estrella Mountain Community College. Kastl was designated as a male at birth and remained a male through the beginning of her employment. After she began working at the college, she was diagnosed with Gender Identity Disorder. Since that diagnosis, Kastl has lived and presented herself as a woman. Her doctor determined that she was female, she changed her name to a feminine name, and obtained a driver's license indicating her sex as female. Following complaints from minor students that Kastl was improperly using the women's restroom, the college issued a new restroom policy that required Kastl and another transsexual faculty member to use the men's restroom until they provided proof that they had completed genital correction surgery. Kastl refused to comply with the new policy and the college terminated her employment. Kastl sued the college, claiming that it violated Title VII when it issued the policy requiring her, a biological female, to use the men's restroom until she was able to prove that she did not have male genitalia, and terminated her employment when she refused to abide by that policy. The college asked the court to dismiss Kastl's claim, arguing that designating restroom use based on possession of male or female genitalia is not unlawful sex discrimination.

In Kastl v. Maricopa County Community College (6/2/04) the U.S. District Court in Arizona ruled that creating restrooms for each sex but requiring a woman to use the men's restroom if she fails to conform to the employer's expectations of a woman's behavior or anatomy, or requiring her to prove her conformity with those expectations, violates Title VII. Although the college argued that segregating restroom use by genitalia is legally permissible, the court noted that there was a factual dispute on the nature and application of the restroom policy.

Pregnant Teacher Ruled Not Eligible for FMLA Leave

Brandi Walker was hired as a third grade teacher by the Elmore County Board of Education for a one-year term. Walker's contract provided for a start date in August and an end date in May of the following year. In December, Walker notified the school principal that she was pregnant and inquired about the process for obtaining maternity leave benefits after the baby's arrival. Just prior to the end of the school year in May, the school board decided not to renew Walker's contract. Two months later, in July, Walker gave birth to a daughter. Walker sued the school board alleging that she was denied a right to maternity leave under the Family and Medical Leave Act and that the refusal to renew her contract was in retaliation for her request for FMLA leave. The trial court dismissed Walker's claims and she appealed.

In Walker v. Elmore County Board of Education (8/5/04) the U.S. Court of Appeals for the Eleventh Circuit affirmed the dismissal but for different reasons. The appeals court agreed that, because Walker had not worked for the school board for at least twelve months and for at least 1,250 hours of service, she had no right to FMLA leave. The appeals court also ruled that Walker would not have been eligible for leave at the time her leave was to begin. Instead, her request was for leave that, at best, would have begun several days before she would have become eligible, assuming her contract had been renewed. Accordingly, the appeals court determined that Walker was not protected by the FMLA.

Court Dismisses Title VII Hostile Environment Claim Based on Anti-Japanese Remarks but Permits Section 1981 Retaliation Claim to Proceed to Trial

Thomas Bainbridge worked at Loffredo Gardens, a fresh produce company, as its warehouse manager. Bainbridge's wife is Japanese. During the term of his employment, Bainbridge complained to management about racial epithets for Asians and other minorities used by the company's owners and operators. Bainbridge asserted that he heard the owners make racially offensive remarks about Asians approximately once a month during his two years of employment. Bainbridge also contends that the owners used racial slurs referring to other minorities. After he complained that he could not take the racial slurs anymore, Bainbridge left on a scheduled vacation. Several days prior to his return, Loffredo Gardens sent him a letter terminating his employment due to problems with his interpersonal skills with subordinates. Bainbridge sued Loffredo Gardens claiming he was subjected to a hostile work environment in violation of Title VII and section 1981 of the civil rights acts. Bainbridge also claimed his termination was in retaliation for his complaints of discrimination and harassment. The trial court dismissed Bainbridge's claims and he appealed.

In Bainbridge v. Loffredo Gardens, Inc. (8/4/04) the U.S. Court of Appeals for the Eighth Circuit ruled that the trial court properly dismissed Bainbridge's hostile work environment claims. A majority of the appellate judges (one judge abstained) ruled that the number of racial slurs, which averaged about one per month, were not objectively severe or pervasive. The appeals court explained that the remarks were not about Bainbridge, his wife, or their marriage. Instead, the remarks were used in reference to customers, competitors, or other employees. The court determined that those remarks were not sufficiently severe or pervasive to alter the terms and conditions of his employment. The court, therefore, affirmed the dismissal of his hostile work environment claims.

The appeals court also affirmed the dismissal of Bainbridge's Title VII retaliation claim. The appeals court agreed that Bainbridge failed to check the box next to the word "retaliation" on his complaint form and did not allege any facts in his complaint connecting his termination with his complaint about racial slurs. Accordingly, the appeals court agreed that Bainbridge failed to exhaust his administrative remedies for his Title VII retaliation claim.

However, the appeals court determined that Bainbridge submitted enough circumstantial evidence for his section 1981 retaliation claim to be submitted to a jury. The appeals court noted that Bainbridge was discharged while he was on vacation and just six days after he had complained about racial conduct. The appeals court also noted that Bainbridge had consistently received raises during his employment, which indicated satisfactory job performance. Accordingly, Bainbridge established that Loffredo Gardens may have fabricated reasons to justify his termination in order to mask their retaliation.

Court Enforces Non-Compete Agreement Preventing Nike Employee from Working at Reebok

Eugene McCarthy resigned his position as director of sales for Nike's brand Jordan Division to become vice president of footwear sales and merchandising at Reebok, one of Nike's competitors. Nike filed a lawsuit seeking a preliminary injunction to prevent McCarthy from working for Reebok for a year, invoking a non-compete agreement McCarthy had signed six years previously, when Nike promoted him to regional sales manager. The trial court entered a preliminary injunction and McCarthy appealed.

McCarthy claimed that the non-compete agreement he signed was unenforceable because, at the time Nike asked him to sign the agreement, he already had been performing the duties of regional sales manager for a month and already had received Nike's confidential information. He also claimed that the agreement was not linked to any increase in his compensation because his compensation was increased one month after he began performing his new duties as regional sales manager. In Nike, Inc. v. McCarthy (8/9/04) the U.S. Court of Appeals for the Ninth Circuit rejected McCarthy's arguments, determining instead that the requirement of signing the non-compete agreement was made in connection with the final agreement on the terms and conditions of his promotion and that his promotion evolved over a reasonably short period of time with no unreasonable delays by Nike in finalizing the process. Accordingly, the court affirmed the entry

of a preliminary injunction.

Court Denies FLSA and Connecticut Wage Law Motion to Certify Class Action of Insurance Claims Adjusters

In Mike v. Safeco Insurance Company of America (8/5/04) the U.S. District Court for Connecticut denied a motion to certify a class in an action brought by William Mike, a Safeco field claims representative who alleged that he was misclassified as administratively exempt from the overtime rules of the Fair Labor Standards Act and the Connecticut wage statutes. Mike claimed that he, and other field claim representatives, did not perform all of the duties listed on Safeco's published job description for their position and, therefore, did not meet the test for establishing that they were exempt. The court ruled that Mike's proposed class was untenable because the court would have to conduct individual inquiries on the merits of each proposed employee's claim in order to determine whether that employee's duties deviated from Safeco's job description such that the employee should be a member of the class. This inquiry would require the court to make fact-specific determinations for each employee, eviscerating any benefit from proceeding as a class.

"Hooters Girl" May Proceed to Trial on Her Title VII Sexual Harassment Claim

Joanna Ciesielski sued Hooters of America, Inc. and Hooters on Higgins, Inc. alleging that her managers and co-workers created a sexually hostile work environment in violation of Title VII. Hooters filed a motion seeking to dismiss her claims, conceding that Ciesielski was subjected to verbal or physical conduct of a sexual nature but arguing that the conduct was not severe or pervasive enough to create a hostile work environment. In Ciesielski v. Hooters of America, Inc. (7/28/04) the U.S. District Court for Illinois ruled that Ciesielski offered enough evidence to proceed to a trial on her hostile work environment claim. The court noted that her managers repeatedly made comments about her physical appearance. One manager said that her breasts looked firm, her butt looked good, her breasts looked bigger, and asked whether she got "boob implants." Other managers called her names and asked her out on a date. Despite her complaints, the conduct continued. The kitchen staff also made unwanted comments on her physical appearance, whistled at her, and made other gestures. One kitchen staff member repeatedly tried to touch Ciesielski's back or grab her arm or hand, and frequently asked her out on dates. In addition, on three occasions, holes appeared in the walls of the room where Ciesielski changed into her work clothes. Despite her complaints that the holes were being used for peeping at her and other waitresses, Hooters did not investigate who made the holes and did not take steps to prevent their reappearance. Based on these facts, the court explained that a reasonable jury could find that the conduct of Hooters' managers and employees was severe and pervasive enough to create a sexually hostile work environment.

Company's Objections to Military Leave Sufficient for USERRA Claim

Michael Mills worked as a route sales representative for Earthgrains Baking Companies. He also served in the National Guard. As part of his service, he was required to report for duty one weekend per month and two weeks over the summer. Mills alleged that his requests for leave were met with resistance by Earthgrains and that his supervisors pressured him to change his duty schedule so that it would not interfere with his work schedule. After September 11, 2001, Mills' duty schedule changed and he was told to change his duty schedule "or else." Mills reported for duty for two weeks and, upon his return, was terminated. Mills sued Earthgrains alleging wrongful termination and retaliation in violation of the Uniformed Services Employment and Re-Employment Rights Act. Earthgrains requested that the court dismiss the lawsuit. In Mills v. Earthgrains Baking Companies, Inc. (7/19/04) the U.S. District Court in Tennessee ruled that Mills offered enough evidence to proceed to trial. In addition to the evidence showing that Earthgrains resisted his attempts to schedule his military leave, the court relied on statements from Earthgrains' former human resources director who described the company's reluctance to grant Mills his leave and stated that Earthgrains would not have hired Mills had it known he was in the National Guard.