ROBINSON & COLE LLP
Labor, Employment & Benefits

Employer Is Not Entitled To Inquire about Immigration Status of Employees in Title VII National Origin Lawsuit

NIBCO, Inc., a manufacturer of valves, fittings and other piping products, required production workers in its California factory to take a basic skills English-proficiency exam. The workers, who were all Latina and Southeast Asian female immigrants, had limited English proficiency and performed poorly on the test. Twenty-five employees were then demoted, transferred to undesirable assignments and eventually discharged. The employees sued NIBCO for national origin discrimination in violation of Title VII. During the discovery process, NIBCO asked the workers about their immigration status. They refused to answer and obtained a court order protecting them from having to answer those questions. NIBCO appealed the issuance of the protective order.

In Rivera v. NIBCO, Inc. (4/13/03) the U.S. Court of Appeals for the Ninth Circuit ruled that the protective order was justified. The appellate court determined that "the chilling effect of disclosure of the plaintiffs' immigration status would adversely affect their ability to effect their rights and would unacceptably burden the public interest." The court also rejected NIBCO's argument that the after-acquired evidence doctrine entitled it to inquire at depositions about the immigration status of the former employees. The court noted that depositions are not "fishing expeditions" and that, for the after-acquired evidence doctrine to apply in the immigration context, the employer would have to prove that it would have actually fired the employees had it known they were undocumented. Because NIBCO had not presented any evidence that it would have done so, the issuance of a protective order was proper.

Massachusetts Court Rules that Premium Pay for Sunday/Holiday Work May be Credited Towards Overtime Pay

Massachusetts' "Blue Laws" require an employer to pay premium pay of one and one-half times the regular rate for work done on Sunday or holidays. Massachusetts' wage and hour laws require an employer to pay overtime at the rate of one and one-half times the regular rate for work in excess of 40 hours per week. AutoZone informed its Massachusetts employees that all Sunday premium pay would be credited towards overtime pay. Two employees challenged the new policy, seeking the continuation of double-premium pay previously paid by AutoZone for Sunday work if in excess of 40 hours. In Swift v. Auto Zone, Inc. (4/13/04) the Massachusetts Supreme Judicial Court ruled that an employer may credit premium pay for Sunday work towards overtime pay. The court ruled that just because two statutes require an employer to do the same thing it does not mean that the employer must do it twice. The court specifically refused to defer to an Opinion Letter issued by the Department of Labor and Workforce Development that stated that crediting Sunday work to overtime was improper. In addition, while the Swift case was pending, the Massachusetts legislature amended the overtime laws to expressly permit crediting by excluding from the calculation of overtime all work on Sundays or holidays where the employee is paid at the rate of one and one-half times his or her regular rate of pay.

Corporate Liability May Attach where Neutral Decisionmaker Relies on Information Provided by Employee with Discriminatory Animus that is Inaccurate, Misleading or Incomplete

John Cariglia managed the Boston branch of Hertz Equipment Rental. Cariglia turned the Boston branch around, exceeding pre-tax profits every year and making it the most profitable branch in the region. The Boston branch was supervised by James Heard, the division vice-president for the northeast region. Cariglia alleged that Heard denigrated Cariglia (who was born in 1934) on account of his age, calling him "over the hill," "not our kind," and someone "who should not be here." The Boston branch underwent a series of audits and investigations. At least one audit was instigated by Heard, who told the regional controller to "get the goods" on Cariglia and "keep digging" until he found something to "get rid of Cariglia." The audit revealed a financial irregularity related to Cariglia. The audit report was forwarded to Hertz senior management who then terminated Cariglia's employment due to the apparent financial impropriety. Cariglia sued Hertz for age discrimination. The trial court dismissed Cariglia's claim and he appealed.

In Cariglia v. Hertz Equipment Rental Corporation (4/5/04) the U.S. Court of Appeals for the First Circuit reinstated Cariglia's claim. The appellate court ruled that a corporation may be found liable for discrimination where neutral decisionmakers deciding whether to terminate an employee rely on information that is inaccurate, misleading or incomplete because of another employee's discriminatory animus. The appellate court explained that there was enough evidence to show that Heard, who had uttered age-related comments, had influenced the termination process by providing inaccurate, misleading and incomplete information upon which Hertz relied upon for its decision to discharge Cariglia.

Company President Fired for Sexual Harassment is Entitled to Compensation and Benefits under His Employment Contract

Gerald Fields was a long-time employee of Thompson Printing Company, having starting working there at age 13. After 35 years, Fields entered into an employment contract with TPC. The contract had a 10-year term. TPC could discontinue the contractual benefits if Field resigned, but not if he was terminated. The contract had a non-forfeiture clause favoring Fields that stated: "This Contract shall be non-terminable by [TPC]. In the event [TPC] shall terminate the employment of [Fields], all of the benefits as contained herein shall continue in accordance with the terms and provisions of this Agreement." TPC discharged Fields after receiving complaints of sexual harassment against him by three female employees. When TPC refused to pay Fields the compensation and benefits provided for in the employment contract, Fields sued for violation of the Employment Retirement Income Security Act and for breach of contract. TPC argued that enforcing the contract would violate the public policy embodied in anti-harassment legislation. In Fields v. Thompson Printing Co., Inc. (3/31/04) the U.S. Court of Appeals for the Third Circuit ruled that TPC was required to pay the compensation and benefits set forth in the contract. The court rejected TPC's argument that enforcing the contract, given Fields' alleged sexual harassment, would violate public policy. Because the contract's express terms did not include a forfeiture provision, Fields was entitled to the benefits and compensation.

Employee with AIDS Could Not Show that His Termination Violated the ADA or the FMLA

Anthony Buie worked in the finishing department of Quad/Graphics where he was frequently absent. After receiving a warning for excessive absenteeism he disclosed that he had AIDS and explained that his absences were health-related. Quad/Graphics excused those absences that Buie documented as health-related and provided him with short-term disability benefits. However, since Buie had 14 additional non-health-related absences during the prior 11 months, Quad/Graphics suspended Buie for those absences and presented him with a last chance agreement. Under the agreement, Buie could be terminated for any violation of the employee handbook or the agreement itself. Within two weeks of signing the agreement, Buie had a confrontation with a supervisor. Another employee corroborated the supervisor's account and Buie was issued a written warning. Buie then threatened his supervisor by coming within six inches of her face, pointing his finger, and telling her, "I'll get you, bitch." He also called her home to report that if "something happens to [her] on the bus tonight, it is her own fault." When Quad/Graphics learned of the phone call, it terminated Buie's employment for violating the company's workplace violence policy. Buie then sued for violation of the Americans with Disabilities Act and the Family and Medical Leave Act. In Buie v. Quad/Graphics, Inc. (4/27/04) the U.S. Court of Appeals for the Seventh Circuit ruled that Buie could not establish that his termination violated the ADA or was in retaliation for having taken FMLA leave. Although his discharge occurred within weeks of Buie's disclosure, the court found that he was "on the brink of discharge" even before Quad/Graphics learned that he had AIDS. Because Buie could not establish that his attendance deficiencies and that his violation of the company's workplace violence policy were a pretext, the appellate court agreed that his claims were properly dismissed.

EEOC Adopts Proposal to Exempt Retiree Health Benefit Plans from ADEA

At a public meeting held on April 22, 2004, the U.S. Equal Employment Opportunity Commission approved a rule that would allow employers to lawfully coordinate retiree health benefit plans with Medicare or comparable state-sponsored health benefit plan without violating the Age Discrimination in Employment Act. According to the EEOC's press release, "This rule is intended to ensure that the ADEA does not have the unintended consequence of discouraging employers from providing valuable health benefits to retirees." The EEOC's prior policy concluded that coordinating retiree health benefits with Medicare eligibility constituted an illegal age-based distinction in violation of the ADEA. The proposal must be submitted for review to other federal agencies and the Office of Management and Budget. After this review is concluded, the final rule would be published in the Federal Register. The EEOC proposal was met with disappointment by the American Association of Retired Persons, which stated in anAARP press release that the rule would allow employers to reduce or eliminate benefits for retirees.

New Regulations Overhauling the White-Collar Exemptions to the FLSA Are Published

The final regulations on the exemptions for executive, administrative, and professional employees, for highly-compensated employees and for computer-related occupations were finally published in the Federal Register on April 20, 2004. These new regulations are scheduled to become effective in 120 days. Please stay tuned for a separate e-News alert on these new regulations.

ROBINSON & COLE LLP