ROBINSON & COLE LLP

Labor, Employment & Benefits

Section 1981 Discrimination Claims Are Governed by a Four-Year Statute of Limitations

A group of employees of R.R. Donnelley & Sons' Chicago manufacturing division commenced a class action under section 1981 alleging that they were subjected to a racially hostile work environment, given inferior employee status, and wrongfully terminated or denied transfers in connection with the closing of the Chicago plant. R.R. Donnelley & Sons requested that the court dismiss the claims because they were barred by Illinois' two-year statute of limitations for personal injury claims. The employees countered that their claims were governed by a four-year statute of limitations for federal statutes enacted after 1990. The company argued that section 1981, which was enacted in 1866 and amended in 1991, was not subject to the four-year limitation.

In Jones v. R.R. Donnelley & Sons Company (5/3/04) the U.S. Supreme Court ruled that all discrimination claims brought under section 1981 are governed by a four-year statute of limitations. The court recognized that, before this ruling, some courts applied the four-year statute while others borrowed limitations from state law, often resulting in different time limits for claims under section 1981 depending on where the claim was filed.

Termination of Supervisor Who Harassed Lesbian Employee Did Not Constitute Religious Discrimination

Eleanor Bodett, a supervisor at CoxCom Inc., told her subordinate, an openly gay employee, that homosexuality was wrong and considered by God to be a sin, that God's design for a relationship was between a man and a woman, and other similar comments. When the employee later resigned, she attributed her decision to Bodett's comments. Upon learning of Bodett's comments, CoxCom advised Bodett that her behavior was in gross violation of the company's anti-harassment policy. Bodett responded that "sometimes there is a higher calling than a company policy."

After CoxCom terminated Bodett's employment, Bodett filed a lawsuit claiming religious discrimination in violation of state law, Title VII, and the First Amendment of the U.S. Constitution. In Bodett v. CoxCom Inc. (4/26/04), the U.S. Court of Appeals for the Ninth Circuit affirmed the lower court's decision to dismiss Bodett's lawsuit, finding that Bodett failed to produce evidence that CoxCom's decision to terminate her employment was motivated by bias or animus against her religion. The appeals court also decided that Bodett's actions constituted harassment of her subordinate, in violation of CoxCom's policies, and thus, CoxCom had a legitimate nondiscriminatory reason for terminating Bodett's employment. Bodett's First Amendment claim was dismissed on the grounds that CoxCom is a private employer, and thus, not subject to constitutional requirements.

Public Employees in New York Can Pursue Disability Discrimination Claims against their Employers under Title II of the ADA

When three labor unions representing transportation workers in New York City challenged the NYC Transit Authority's sick leave policy, they alleged that the city violated both Title I and Title II of the Americans with Disabilities Act. Title I of the ADA prohibits discrimination on the basis of disability in the employment context. Title II of the ADA prohibits discrimination by public entities. Whereas Title I covers employers with 15 or more employees, Title II covers all public employers, regardless of size. In addition, under Title II an employee need not exhaust administrative remedies, as is required by Title I. The Transit Authority moved to dismiss the lawsuit, claiming that the unions did not have standing to pursue the claims and that employment discrimination claims could be brought only under Title I. In Transport Workers Union of Am. Local 100 v. New York City Transit Authority (4/13/04), the U.S. District Court for New York ruled that public employees could pursue employment discrimination claims under Title II of the ADA and that the unions could pursue the lawsuit on behalf of its members.

Claims of Sexual Harassment May Be Subject to Arbitration Agreement

When Jonathan Gold, an investment bank trainee, was hired by Deutsche Bank, he signed an employment agreement providing that all employment disputes with the bank be arbitrated. Gold claimed that, once his sexual orientation became known, he was subjected to a hostile work environment and harassment. When Gold filed a lawsuit against Deutsche Bank in federal court, the bank moved to compel arbitration based upon the employment agreement. The court issued a stay of litigation and the case proceeded to arbitration. After losing his case before an arbitrator, Gold asked the court to lift the judicial stay, renewing his arguments that Title VII claims are not subject to mandatory arbitration and that the arbitration clause in his employment contract was invalid because he had never been given a copy of the arbitration rules referenced in the contract.

The U.S. Court of Appeals for the Second Circuit in Gold v. Deutsche AG (4/21/04) rejected both arguments. As a threshold matter, the appeals court reaffirmed that Title VII claims are arbitrable. Acknowledging that it might have been preferable for Deutsche Bank to give Gold a copy of the arbitration rules referenced in the employment contract, the appeals court ruled that the bank's failure to do so did not render the contract unenforceable, particularly given Gold's testimony that he had not fully read the contract before he signed it. According to the appeals court, Gold bore the ultimate responsibility of ensuring that he understood the contract before he signed it.

Job Transfer Made at the Request of a Sexual Harassment Victim Does Not Constitute a Tangible Adverse Job Action

Sergeant Michael Chin of the Lakeland Police Department made sexual advances to a Public Safety Aide who did not report to him, Sandra Speaks. Although Speaks claims that the advances were unwelcome, she ultimately agreed to have sexual intercourse with Chin. Shortly afterwards, Speaks requested a transfer into Chin's squad because she did not like her supervisor. The police department granted the transfer not knowing about the ongoing sexual relationship between Chin and Speaks. After approximately one year, Chin threatened to transfer Speaks back to her previous supervisor. Upset by this threat, Speaks told her husband about Chin's sexual advances toward her. Speaks' husband then reported Chin's misconduct to the police department.

The police department immediately began an investigation into the alleged harassment, during which Speaks was allowed to remain at home with full pay. Based upon its investigation, the police department concluded that Speaks and Chin had engaged in an inappropriate but consensual sexual relationship. Chin was demoted, suspended for two weeks without pay, and transferred to a different unit. When Speaks refused to return to work, the department granted her request for a transfer into another position. Although Speaks initially agreed to the transfer, she did not return to work and requested a different position. After the police department denied her request, Speaks returned to work for a few months, but ultimately resigned allegedly due to mental health issues.

In Speaks v. City of Lakeland (4/21/04) Speaks filed suit against the City of Lakeland alleging sexual harassment and retaliation. The U.S. District Court for the Middle District of Florida dismissed Speaks' claims on the grounds that she had not suffered any tangible employment action and that the City satisfied the Faragher/E Faragher/Ellerth affirmative defense by showing that it had taken reasonable steps to prevent and promptly correct sexual harassment and that Speaks unreasonably failed to avoid harassment. The court's conclusion that Speaks had not suffered a tangible employment action was based on its decision that a transfer is not a tangible employment action for purposes of harassment complaint when the transfer is made with the employee's consent or at the employee's request in an effort to remediate prior sexual harassment.

Conviction for Failing to Pay Wages Affirmed Despite Lack of Criminal Intent

Barrie Wilson founded a flooring business called A Plus Flooring. He contacted a local employment agency and eventually hired 129 individuals who he agreed to pay $15 per hour. The employees completed application forms and W-2 forms before they commenced work. The employees worked for two weeks, but did not receive payment. They continued to work for a short time thereafter believing they would be paid, but Wilson did not pay them. The employees filed claims with the Connecticut Department of Labor. Wilson was eventually convicted of eight counts of failing to pay wages. He appealed the conviction, claiming that the trial court failed to charge the jury that the state was required to prove that he intended to not pay wages and that, if there was no element of intent, then the statute was unconstitutionally vague.

In State v. Wilson (5/18/04) the Connecticut Appellate Court affirmed Wilson's conviction, ruling that the statute requiring payment of wages "is one of strict criminal liability designed to eradicate the evil of nonpayment of wages even though those without an evil purpose might end up ensnared in its net." The court also rejected Wilson's claim that the statute was unconstitutionally vague, explaining that the statutory requirements for imposing strict criminal liability for nonpayment of wages was not vague.

Maine's State Overtime Laws Do Not Apply to Interstate Truck Drivers

Truck drivers, Donald Thompson and Frederick Lockwood, were employed by Clifford W. Perham, Inc. to deliver grocery items to Shaw's Supermarkets in various New England states from warehouses in Maine and Massachusetts. Prior to 1999, all truckers employed by Perham were paid by the mile. After 1999, truck drivers who drove less than 280 miles per day were paid by their hours worked but drivers who drove more than 280 miles per day were paid by the mile. (All drivers were paid by the hour for time spent loading and unloading trucks, waiting time and for emergency maintenance.) Relying on Maine's overtime law, which requires employers to pay overtime for all hours actually worked in excess of 40 hours in a week, Thompson and Lockwood sued Shaw's Supermarkets for unpaid overtime. In Thompson v. Shaw's Supermarkets Inc. (5/10/04), the Maine Supreme Court ruled that the state overtime law does not apply to interstate truckers, noting that the state labor department had considered interstate truck drivers exempt from Maine overtime laws for over three decades.

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