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Labor, Employment & Benefits



Remarks about Salesman's Age a Major Factor in ADEA Claim

Chuck Olson worked for Northern FS, Inc. for more than 40 years, spending most of those years in sales. At some point during the 1990s, Olson claims that his supervisor, Steve Keeler, told him he was undesirable in the business world because of his age. In 2000, Northern hired 22-year old Jacob Bloome as its new crop salesman. Bloome had no sales experience. The same day, Keeler transferred Olson to a non-sales position and fired him 11 days later. Olson sued Northern for age discrimination. Although the trial court dismissed the case, in [Olson v. Northern FS, Inc.](#) (10/22/04), the U.S. Court of Appeals for the Seventh Circuit reversed and ruled that Olson was entitled to pursue his claim. The appeals court concluded that Olson's evidence that his job performance was satisfactory combined with Keeler's statement about Olson's age and Northern's decision to hire a substantially younger replacement with no sales experience, was sufficient to let a jury decide whether Olson's age was a factor in his termination.

Preference for Bilingual Applicants Not Discriminatory under Title VII

Raymond Richardson applied for a position as a marketing representative with CenterCare, Inc. After being denied the position, Richardson sued CenterCare, claiming that he had been discriminated against because he was not a bilingual applicant. Richardson had filed another complaint making essentially identical claims against a different employer several months earlier. CenterCare asked the court to dismiss Richardson's claims and to prohibit him from bringing additional "frivolous" lawsuits against CenterCare or its affiliates.

In [Richardson v. Centercare, Inc.](#) (9/30/04) the U.S. District Court for New York dismissed Richardson's claims, ruling that even if CenterCare did not hire Richardson because he was not bilingual, its actions did not give rise to a discrimination claim under Title VII. A preference for an individual with bilingual ability does not in and of itself give rise to a claim for discrimination on the basis of national origin. The court refused to prohibit Richardson from filing future complaints, but noted that the issue might be revisited in the future if Richardson filed additional complaints.

Strict Sick Leave Policies Not Justified By Absenteeism, but Were Appropriate for Safety-Sensitive Positions

Unions representing NYC Transit Authority employees sued the Transit Authority challenging its sick leave policies. According to the policies (1) the employee must call out sick at least one hour before work and provide a brief statement of the illness; (2) upon return to work, the employee must submit a sick leave application describing the nature of the disability that caused the absence; and (3) in certain circumstances, the employee's doctor must certify that the employee was so incapacitated that he/she was unable to perform duties, and must describe the employee's diagnosis and prognosis. The unions claimed that these policies violated the Americans with Disabilities Act, arguing that the Transit Authority did not have a sufficient business justification for the medical inquiries.

The Transit Authority argued that the policies were justified by the high rate of absenteeism among employees, which was disruptive and costly. The Transit Authority also argued that many of its employees, such as bus drivers, work in safety-sensitive positions and that the Authority is obligated to ensure that the drivers' ability is not impaired by fatigue or illness.

In [Transport Workers Union v. New York City Transit Authority](#) (10/12/04), the U.S. District Court for New York ruled that the Transit Authority's concerns about absenteeism did not justify the intrusive medical inquiries. The safety concerns raised by the Transit Authority were sufficient to justify the continued application of the policies to bus drivers; however, the court ruled that it did not have sufficient information to determine whether similar safety concerns justified applying the policies to other positions.

EEOC Issues Fact Sheet on Persons with Intellectual Disabilities in the Workplace and the ADA

On October 20, 2004, the Equal Employment Opportunity Commission released a [fact sheet](#) providing general information about intellectual disabilities and when individuals with such impairments are covered by the Americans with Disabilities Act. An individual with intellectual disabilities is a person with an IQ below 70-75, who is significantly limited in the basic skills needed for everyday life and whose disability began before age 18.

The fact sheet explains that having an intellectual impairment does not mean an individual is automatically considered disabled under the ADA. In the fact sheet, the EEOC describes the guidelines employers must follow when obtaining and using medical information. It also describes the types of reasonable accommodations such individuals may need, like demonstrating rather than describing what the job requires, giving instructions at a slower pace, or providing the employee with a detailed schedule to complete tasks. The EEOC's fact sheet also addresses issues of safety concerns or conduct violations relating to employees with intellectual impairments.

Employee Perceived as Disabled under the ADA because She Could Not Evacuate Building

Laura Barrios, a long-time employee of E.I. Du Pont de Nemours & Co., suffers from severe scoliosis of the lumbar spine and has considerable difficulty walking. Du Pont ordered Barrios to take a functional capacity examination. Even though the exam established that Barrios could adequately perform the duties of her sedentary position, Du Pont restricted Barrios from walking anywhere in the plant, and then placed her on total permanent disability retirement, terminating her employment. The EEOC sued Du Pont on Barrios' behalf, claiming that Du Pont violated the Americans with Disabilities Act by terminating Barrios because of her disability. Du Pont contended that Barrios' walking restriction would prevent her from evacuating the plant in case of an emergency, which it considered to be an essential function of her job. Therefore, Du Pont argued, Barrios' inability to evacuate posed a threat to herself and others, removing Barrios from the protections of the ADA.

In [EEOC v. E.I. Du Pont de Nemours](#) (10/15/04), the U.S. District Court for the Eastern District of Louisiana ruled that Du Pont perceived Barrios as disabled and that a jury should determine whether evacuation was an essential job function and whether Barrios posed a

direct threat to others. After a two and one half day trial, the jury rejected Du Pont's arguments and awarded Barrios \$1 million in punitive damages (which was reduced to \$300,000 per the statutory cap), \$200,000 in front pay, and \$91,000 in back pay.

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