ROBINSON & COLE LLP
Labor, Employment & Benefits

Court Upholds City's No-Dating Policy

Michael Anderson, a police officer for the City of LaVergne, Tennessee, began a romantic relationship with Lisa Lewis, an administrative assistant for the police department. LaVergne's chief of police ordered Anderson and Lewis to cease all contact with each other outside of the work place. The chief believed that intra-office dating between employees of different ranks (Lewis outranked Anderson) might lead to sexual harassment claims against the police department. Despite the order, Anderson and Lewis continued their relationship. After the police chief learned about their continuing relationship, Anderson was terminated for failing to follow the order, although Anderson later accepted an offer to resign. Anderson sued the City alleging that the order to stop dating violated his First and Fourteenth Amendment right of intimate association, claiming damages under Section 1983.

In Anderson v. City of LaVergne (6/16/04) the U.S. Court of Appeals for the Sixth Circuit ruled that the city's no-dating policy was rationally related to the city's legitimate governmental interest in barring relationships between police department employees of different ranks and, thus, promoted its interest in avoiding sexual harassment lawsuits. Accordingly, the appeals court dismissed all claims against the city and its chief of police.

Punitive Damages Award Upheld in Title VII Sex Discrimination Case

Ann MacGregor was the only female among the business segment directors of Mallinckrodt, a producer and seller of healthcare products. Her supervisor, Hans Stover, commented that there were "too many women at the table" and, in response to a female manager who proposed having a female candidate, stated that "there are too many women in marketing." Later, Stover sent a memo to Mallinckrodt employees stating that MacGregor was leaving the company, and she later received a termination letter. MacGregor sued Mallinckrodt claiming sex discrimination under Title VII. After a week long trial, the jury awarded MacGregor $1,000,000 in damages: $68,800 for lost wages, $102,000 for lost stock options, $1 for other damages, and $830,000 for punitive damages. Under the statutory damages cap, the court reduced the punitive damages award to $300,000. Mallinckrodt appealed the award of punitive damages, arguing that its non-discrimination policies and investigations did not support the punitive damages award.

In MacGregor v. Mallinckrodt, Inc. (6/30/04) U.S. Court of Appeals for the Eighth Circuit sustained the punitive damages award. The appeals court noted that MacGregor offered evidence of managerial apathy to her complaints, such as the company's human resources manager who failed to investigate her claims. She also showed that, notwithstanding Mallinckrodt's corporate anti-discrimination policies, the company did not act in accordance with those policies. Only minimal investigations were conducted and no form of reprimand was given to offending employees.

CFMLA Claim Dismissed because Employee Failed To File Administrative Claim with DOL

In Abbate v. Cendant Mobility Services Corporation (6/23/04) the U.S. District Court for Connecticut dismissed Michelina Abbate's claim that her employer, Cendant Mobility, violated her rights under Connecticut's Family and Medical Leave Act after she was discharged following her return to work after a 13-week leave for treatment of an illness. Abbate did not file a claim with the Connecticut Department of Labor; instead, she filed a lawsuit. In dismissing her lawsuit, the court explained that, although the CFMLA regulations provide that a party "may" file a claim with the Department of Labor, the word "may" does not give an employee the option to seek redress before either the Department of Labor or a court. Rather, the word "may" signifies that an employee has the option to seek legal redress through the Department of Labor or to do nothing.

Punitive Damages under Connecticut's Free Speech Law Are Limited to Double Attorneys' Fees

In Burrell v. Yale University School of Medicine (5/10/04) the Connecticut Superior Court ruled that an employee proving a violation of Section 31-51q, Connecticut's Free Speech Statute, is limited to punitive damages in an amount equal to an award of attorneys' fees and, if the employee proves that the employer acted with a reckless indifference to the rights of others or intentionally and wantonly violated those rights, a second award of attorneys' fees. The plaintiffs are three present or former faculty members and radiologists at Yale's School of Medicine who alleged that they were retaliated against for speaking out about allegations of systemic medical malpractice and Medicare fraud within Yale's Department of Diagnostic Radiology. The court explained that, although the statute expressly provides for recovery of "punitive damages" and "attorneys fees," the statute must be interpreted in accordance with Connecticut's common law of punitive damages, which limits punitive damages to litigation expenses less taxable costs. The plaintiffs wanted the court to rule that, if successful, they could recover punitive damages in an amount (higher than the amount of attorneys fees) sufficient to punish Yale and an award of attorneys fees.

Court Dismisses Noncompete and Nonsolicitation Claims

Pediatric Occupational Therapy Services sued two former employees, Tara Forgues and April DiFrancesco, and the Wilton Board of Education after Forgues and DiFrancesco left employment as occupational therapists with Pediatric and accepted positions as occupational therapists with Wilton. While employed by Pediatric, Forgues and DiFrancesco signed employment agreements that barred them from accepting any position with an agency served by Pediatric for one year following their employment. During their employment, Forgues and DiFrancesco provided services to Wilton. Wilton decided to save money and began offering occupational therapy services internally through school employees rather than through an outside contractor like Pediatric. Wilton then posted the openings, Forgues and DiFrancesco applied, and Wilton hired them.

In Pediatric Occupational Therapy Services, Inc. v. Town of Wilton (4/7/04) the Connecticut Superior Court ruled that the agreement signed by Forgues and DiFrancesco did not bar their employment by Wilton. The court explained that the posting or advertising of a job to the public was not a solicitation of an employee encompassed by the non-solicitation ban. The court reasoned that solicitation required some action directed at the individual employee urging or importuning that individual to leave his or her employment. The court also found that there was no legitimate business interest of Pediatric justifying the prohibition on employment because it was Wilton, not the employees, that caused the loss of Wilton as a customer. The court also noted that this was not a case of an employee leaving an employer to work for a competitor or to establish a competing business. Nor did the court find that this was a situation that required restraints to protect an employer from harm by a misappropriation of trade secrets or confidential information or the appropriation of a special or long-standing customer relationship acquired by the employee during the course of employment. Accordingly, the court dismissed all claims against Forgues and DiFrancesco.

Mixed-Motive Analysis Applied to ADEA Claims, Resulting in Reinstatement of Age Discrimination Claims

Ahmed Rachid managed two Jack-In-The-Box restaurants. His supervisor repeatedly criticized him and made disparaging comments about his age. Rachid, who was 52 years old, reported those comments to his human resources department and requested a transfer because he feared that his supervisor would fire him. Rachid was fired for failing to comply with company policies on recording employee time. Rachid sued Jack-In-The-Box claiming that he was discharged on the basis of his age in violation of the Age Discrimination in Employment Act. The trial court dismissed Rachid's claims because he was unable to establish that Jack-In-The-Box's reasons for terminating his employment were pretextual. Rachid appealed, arguing that the trial court applied the wrong legal standard.

In Rachid v. Jack-In-The-Box Inc. (6/25/04) the U.S. Court of Appeals for the Fifth Circuit reversed, applying a new test for analyzing claims under the ADEA.

The Fifth Circuit incorporated the recently-announced mixed-motives analysis used in Title VII cases under the U.S. Supreme Court's decision in Desert Palace, Inc. v. Costa. Under this new analytical framework, an employee must still demonstrate a prima facie case of discrimination, the employer then must articulate a legitimate, non-discriminatory reason for its decision to terminate the employee, and the employee then must offer sufficient evidence to create a genuine issue of fact either that the employer's reason was not true but was instead a pretext for discrimination or that the employer's reason, while true, was only one of the reasons for its conduct and another motivating factor was the employee's protected characteristic. If the employee demonstrates that age was a motivating factor in the employment decision, then the employer must prove that the same adverse employment decision would have been made regardless of any discriminatory animus. If the employer fails to carry that burden, the employee prevails. Determining that Rachid submitted enough evidence to show that his age was a motivating factor and given that the trial court did not apply the proper analysis, the Fifth Circuit remanded the case to the trial court for further proceedings.

CEO's Sexist Comments Provided Motivating Factor and Prevented Dismissal of Title VII Sex Discrimination Claims

Jody Lee worked as a purchasing agent for Curt Manufacturing, a manufacturer and distributor of car and truck towing equipment. Gregory Hooks was hired as the chief executive officer. At least two dozen times, Hooks called the plaintiff a "bitch." In addition, he said things like "I hate that bitch" at least six times and that Lee "must be on Prozac." Hooks also denigrated Lee by comparing her performance to those of males. On more than one occasion, Hooks said that women should stay at home and take care of kids. Hooks criticized Lee frequently but did not treat male employees in the same manner. Hooks wanted to fire Lee, but the company refused to do so. Six months later, the company underwent a corporate restructuring that resulted in two male employees and Lee being laid off. The two male employees were offered severance pay without having to sign a release. Lee, however, was told that she could not receive a severance package unless she signed a separation agreement that contained a release. Lee refused to sign the separation agreement and was terminated because of Hooks' inability to get along with her. Later, the company stated that the reason for Lee's termination was that her performance was not meeting the company's expectations.

Lee sued Curt Manufacturing for sex discrimination under Title VII. The company requested that the court dismiss her claim on the ground that, while Hooks made sexist comments, there was no evidence connecting Hooks' remarks or actions to the company's decision to terminate Lee. Applying the mixed-motive theory announced by the U.S. Supreme Court in Desert Palace, Inc. v. Costa, in Lee v. Curt Manufacturing Inc. (6/24/04) the U.S. District Court for Wisconsin explained that Curt Manufacturing failed to demonstrate that it would have terminated Lee in the absence of the discriminatory motive. Accordingly, because the court found that the company did not meet its burden under the mixed-motive framework, the court denied the company's motion for summary judgment.

Teachers' Retirement Incentive Plan Violated ADEA and Did Not Meet ADEA's Safe Harbor Test

Wappingers Falls Central School District and its Board of Education entered into a collective bargaining agreement with its teachers that offered a salary elective program as a retirement incentive. Teachers who had 15 years of district service, 20 years of member service in the New York State Teachers' Retirement System, and reached age 55 received a $20,000 lump sum payment in addition to other retirement benefits. After the expiration of that collective bargaining agreement, the next agreement contained a new option. Under the new option, a teacher meeting the eligibility criteria was offered the opportunity to continue working and receive an additional $7,000 per year for up to 3 years with no requirement that the teacher retire at any particular time. This augmented salary had the effect of increasing the teacher's pension payments upon retirement. A group of teachers aged 55 and over sued Wappinger claiming that the arrangement violated the Age Discrimination in Employment Act. The trial court dismissed the teachers' claims and they appealed.

In Abrahamson v. Board of Education of the Wappingers Fall Central School District (7/1/04) the U.S. Court Appeals for the Second Circuit ruled that the collective bargaining agreement, which excluded teachers from the $7,000 per year benefit, constituted an adverse employment action in violation of the ADEA because it excluded them from participating on the basis of their age. The appeals court rejected the school district's argument that the option does not discriminate because the option was offered to all teachers who met the service-based eligibility criteria for the first time under the bargaining agreement. The appeals court explained that it was age, and not years of service, that was the real trigger for eligibility. The appeals court also determined that the option did not meet the test for the safe harbor provision as a voluntary retirement incentive plan. The appeals court explained that an early retirement incentive plan must, at a minimum, provide some incentive to retire. The option did not make retirement a more attractive financial option than continuing to teach. The appeals court noted that the option seemed to supply an incentive for teachers to continue working. Accordingly, the appeals court affirmed the district court's decision that required Wappinger and the union to bring the collective bargaining agreement into compliance with the ADEA.