ROBINSON & COLE LLP

Labor, Employment & Benefits

Lack of Professional Engineer License a Legitimate Non-Discriminatory Reason for Failure to Promote

Jayantha Mather worked at the Connecticut Department of Transportation as a supervising engineer. When the Principal Engineer position became available in 1997, Mather applied for, but was denied, the promotion. Mather sued the DOT, claiming that he had not been promoted on account of his race and national origin. The DOT claimed that Mather did not have a professional engineer license, which was a requirement of the Principal Engineer position, and that he had interviewed poorly. Nevertheless, the Connecticut Commission on Human Rights and Opportunities determined that these reasons masked discriminatory intent and entered a decision for Mather. On appeal, the court rejected the DOT's explanation that Mather had interviewed poorly, but found that the professional engineer license had always been a requirement for the Principal Engineer job. The court ordered the CHRO to re-evaluate the case to determine whether the license requirement was an independent reason for the DOT's failure to promote Mather. The DOT appealed, claiming that it was entitled to a judgment as a matter of law that Mather's failure to obtain a professional engineer license was a legitimate, non-discriminatory reason for its failure to promote him.

In Department of Transportation v. Commission on Human Rights and Opportunities (1/11/05), the Connecticut Supreme Court agreed with the DOT, reversed the lower court's ruling, and entered judgment for the DOT. The court concluded that it was undisputed that Mather did not have the professional engineer license and that the license was a prerequisite to his promotion. Because Mather was not eligible for the position, he could not prevail on his claim of unlawful discrimination.

Employee Cannot Pursue Wage and Theft Claims Based on Worthless Stock Options

Jeffrey Brandt was employed as a patent lawyer by Walker Digital Corporation. In 1999, Brandt was awarded over one million employee options to purchase WDC shares. Brandt and WDC agreed that when Brandt's options became fully vested WDC would arrange for the sale of 250,000 of Brandt's options. Later that year, WDC formed Walker Digital, LLC ("WDLLC") and contributed almost all of its assets to WDLLC. In 2001, WDC was dissolved and Brandt's options became worthless. Thereafter, Brandt filed suit against WDLLC and Jay Walker (the founder of WDC and Chairman of the Board of WDLLC). WDLLC filed a motion asking the court to strike several counts of Brandt's complaint.

In Brandt v. Walker Digital (11/1/04), the Superior Court of Connecticut ruled that Brandt could pursue his claims of tortious interference and violation of the Connecticut Unfair Trade Practices Act, but dismissed Brandt's claims of wrongful withholding of wages and statutory theft. The court concluded that Brandt was not restricted from selling the options on his own and, thus, that no wages had been withheld from him. The court also ruled that Brandt's statutory theft claim was inadequate as a matter of law because such a claim requires the deprivation of property, and does not include deprivation of value. Since Brandt still possessed the actual stock options, the Court determined that he had not been deprived of any property.

Company's Rejection of Inconsistent Medical Documentation Did Not Violate the FMLA

Lynn Hoffman was an emergency medical technician at Professional Med Team when she was diagnosed with migraine headaches. Hoffman's prescribed medication caused extreme drowsiness, rendering her unable to work while she was taking the medication. The intermittent nature of migraines made it impossible for PMT to accommodate Hoffman's condition through advance scheduling, so she applied for and received intermittent leave under the Family and Medical Leave Act. Subsequently, PMT asked Hoffman to submit an updated certification from her physician, verifying that she had a serious health condition that necessitated the FMLA leave. Hoffman submitted an updated certification which noted that Hoffman's migraines would cause intermittent short term disabilities but that it was not necessary for her to work only intermittently. When PMT asked Hoffman to correct this contradiction on her form, she refused. Accordingly, PMT denied Hoffman's request for intermittent leave under the FMLA.

About a year later, Hoffman's migraines caused her to miss several days of work and PMT required her to submit to a fitness for duty evaluation in order to return. When Hoffman met with her supervisor to report that her doctor released her to return to work, Hoffman waved the doctor's note in his face and swore at him. The following day, Hoffman again swore at her supervisor. She was fired for several violations of company policy, including use of obscene language toward other employees. Over two years later, Hoffman filed suit against PMT alleging that PMT wrongfully denied her FMLA leave and that she was terminated in retaliation for objecting to PMT's failure to grant the leave. Hoffman was required to prove that these violations were willful because she filed suit more than two years after her termination.

In Hoffman v. Professional Med Team (1/7/05), the U.S. Court of Appeals for the Sixth Circuit ruled that PMT had not willfully violated the FMLA by denying her request for intermittent leave. The court noted in particular that PMT had consulted with legal counsel before asking Hoffman to correct her certification form, which demonstrated that PMT tried to fulfill its obligations under the FMLA. The court also ruled that PMT had not retaliated against Hoffman because she opposed the denial of her request for leave, relying on evidence that the termination decision was sincerely motivated by Hoffman's use of profanity toward her supervisor.

EEOC Regulation Extending the ADEA to Apprenticeship Programs Is Valid

The Paul Hall Center for Maritime Training and Education operates a seafaring apprenticeship program in Maryland. Accepted applicants receive support from and are eligible to join the Seafarers International Union, which represents maritime workers. Several individuals aged 40 and over were denied admission to the program because the Center only accepted applications from individuals aged 17 to 35. These individuals complained to the EEOC, which investigated, and then filed suit against the Center and the Union. The EEOC sought to eliminate the program's age restriction, arguing that it violated a regulation which extends the Age Discrimination in Employment Act's prohibition against age discrimination to apprenticeship programs. The Center and the Union argued that the regulation was invalid. InEEOC v. Seafarers International Union (1/7/05), the U.S. Court of Appeals for the Fourth Circuit upheld the regulation. According to the court, Congress delegated administration of the ADEA to the EEOC, and the regulation extending the ADEA's protections to apprenticehip programs was a reasonable interpretation of the ADEA.

Employer Agrees to Pay $5.1 Million in Back Overtime Wages

The U.S. Department of Labor Investigation has announced that it has reached an agreement with Cingular Wireless to pay over $5.1 million in back wages for violations of the overtime provisions of the Fair Labor Standards Act. A DOL investigation of Cingular's Springfield, Illinois facility had found that customer service representatives routinely began work before the start of their scheduled shifts and sometimes stayed late. The time worked before and after the scheduled shifts was not recorded so the employees were not paid for this time. The FLSA requires employers to pay employees for all hours worked and to maintain accurate payroll records.

On January 11, 2005, the DOL and Cingular entered into a Consent Judgment, which the court must approve, requiring Cingular to issue separate checks to all affected present and former employees within 90 days, for a total amount of unpaid compensation of $5,108,549.00

State Farm Insurance Pays $135 Million to Settle Overtime Suit

In 2000, over 2,500 insurance adjusters in California filed a lawsuit against State Farm Insurance, claiming that they routinely worked more than 8 hours per day without without receiving any overtime pay in violation of California's overtime laws. State Farm initially defended its actions on the basis that the adjusters qualified for the administrative exemption to the overtime laws. After a Los Angeles Superior Court ruled that the adjusters were entitled to overtime, and in advance of a jury trial to determine damages, State Farm agreed to pay the adjusters a total of $135 million to settle the lawsuit. It is expected that each individual adjuster will receive between $34,000 and $64,000, depending on length of service with the company.

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