ROBINSON & COLE LLP
Labor, Employment & Benefits

Release Agreement Invalidated where Employer Offering Severance Failed to Comply with the Information Reporting Obligations under the OWBPA

In Kruchowski v. Weyerhaeuser Company (9/13/05) the U.S. Court of Appeals for the Tenth Circuit ruled that a release of claims agreement that failed to comply with the information reporting requirements of the Older Workers Benefit Protection Act is unenforceable. As part of a reduction in force, Weyerhaeuser offered severance in exchange for a release of claims but, as required by the OWBPA information requirements, did not provide accurate information with respect to the employees who were affected by the layoff. Although Weyerhaeuser described the decisional unit required under the OWBPA as all salaried employees employed at the mill, the actual decisional unit consisted solely of salaried employees who reported to the mill manager. Because the information about the decisional unit was inaccurate, the court ruled that the release did not comply with the technical informational requirements imposed by the OWBPA and, consequently, the employees did not waive their rights to file age discrimination claims against Weyerhaeuser.

Inability to Use Multiple Scrolling Computer Screens Is Not Sufficient to Support an Alleged Disability under Connecticut Law or the ADA; "Chronic" Disability Defined

As a result of an automobile accident 10 years prior to employment with Oxford Health Plans, Patricia Medvey suffered a brain dysfunction frontal lobe and visual disturbance. Employed as a designated service manager for Oxford, Medvey used multiple scrolling computer screens to answer telephone calls from a queue of members of Oxford's insurance plans. Within her first year of employment, Medvey presented a note from an ophthalmologist stating that her use of multiple computer screens was not appropriate given her medical condition and later submitted notes stating that her exposure to work that required the use of a computer should be limited. In an effort to accommodate her, Oxford assigned Medvey to other positions but the company was unable to maintain such alternative positions as a result of downsizing. As a result, Medvey was placed on a medical leave of absence. During her leave of absence, Medvey found other employment, first as an assistant to real estate agents and later as a real estate agent herself. Although Oxford offered her alternative positions during the leave of absence, Medvey rejected them. Medvey sued Oxford, claiming disability discrimination and retaliation under the Americans with Disabilities Act and the Connecticut Fair Employment Practices Act.

In Medvey v. Oxford Health Plans, Inc. (9/20/05), the U.S. District Court for Connecticut granted summary judgment for Oxford based on its determination that Medvey did not suffer from a physical or mental impairment that substantially limited a major life activity nor was her condition "chronic" as required by Connecticut law. The court ruled that, because Medvey was able to care for herself, perform manual tasks, and because she could walk, hear, speak, breath, and learn, her alleged disability did not substantially limit a major life activity. In discrediting Medvey's claim that her ability to work was substantially impaired, the court relied upon the fact that Medvey used a computer in her subsequent employment as an assistant to real estate agents and as an agent, and that she failed to disclose her condition or her supposed limitation concerning the use of computer screens to her subsequent employer.

The court also ruled that, under Connecticut law, Medvey failed to establish that she was "physically disabled" which is defined by state statute as a person with a "chronic physical handicap, infirmity or impairment." Acknowledging that Connecticut law does not define the term "chronic," the court referred to dictionaries that defined the term to mean more than merely a condition lasting a long duration but whether that condition responds to treatment. Because Medvey testified that she performed well at her job and that her condition was responsive to treatment, the court concluded that her condition was not "chronic" under Connecticut law. Robinson & Cole represents Oxford Health Plans in this matter.

Employee Allowed to Pursue FMLA Retaliation Claim where Employer Failed to Return Him to Work after Submission of Medical Documentation

Charles Stevens, a bus driver, attempted to return to work from a one-month leave under the Family and Medical Leave Act during which he recovered from Hepatitis C. Stevens submitted a return to work note from his treating physician; however, the bus company indicated that more detailed documentation concerning Stevens' condition was required before allowing his return to work. Stevens then completed the company's "Return to Duty Questionnaire," in which he indicated that he received psychiatric treatment and was on prescription medication. The company's medical director reviewed the physician's note and questionnaire and determined that still more information was necessary, particularly as a result of Stevens' answers on the questionnaire. Stevens obtained an additional note from his treating physician and, when that one was insufficient, he obtained a third note from his physician. The company's medical director, however, continued to question Stevens' ability to return to work and requested an exercise stress test. Stevens took and passed the stress test, and was allowed to return to work temporarily for 30 days while additional information was sought concerning his psychiatric condition. Although Stevens submitted documentation from the social worker who provided his psychotherapy sessions, the medical director still questioned Stevens' ability to return to work.

Frustrated by the repeated requests for additional information, Stevens filed a lawsuit alleging retaliation for having exercised his FMLA rights. In Stevens v. Coach U.S.A. (9/8/05) the U.S. District Court in Connecticut denied the bus company's motion for summary judgment, ruling that a jury could infer that the company's repeated requests for medical information were intended to prevent Stevens' return to work, and that the company was actually motivated by a desire to retaliate against Stevens for having exercised his FMLA rights. The court was particularly troubled by the fact that the company never explained the exact medical requirements needed for returning him to work.

Court Enforces Contractual 6-Month Limitation for Asserting Employment Claims

In Clark v. DaimlerChrysler Corporation (9/13/05) the Michigan Court of Appeals in a 2-1 decision affirmed the trial court's dismissal of age discrimination claims filed by Robert Clark against DaimlerChrysler. Although Clark filed the claims within Michigan's three-year statute of limitations for asserting discrimination claims, he did not file them within the six-month contractual time limit contained in DaimlerChrysler's employment application. The application for employment that Clark signed noted: "I agree that any claim or lawsuit relating to my service with [DaimlerChrysler] must be filed no more than six (6) months after the date of the employment action that is the subject of the claim or lawsuit. I waive any statute of limitations to the contrary." The appeals court reasoned that, because the contractually-modified limitations period was not contrary to law or public policy or unconscionable, it would be enforced. The dissenting judge wrote that the provision in the application is unconscionable and violates public policy.

Yale Nurse Allowed to Proceed with Claim of Wrongful Discharge in Violation of Public Policy

Ellen Cappiello was employed as a nurse by Yale New Haven Hospital for 26 years. One day, while serving as the nurse manager in charge of the operating room, she spoke out against one of the hospital's surgeons when the surgeon sought to use his own personal surgical instruments instead of the hospital's sterilized instruments on a patient. The day after Cappiello reported the surgeon's conduct, she was suspended for failing to properly record her time and was later discharged. Cappiello sued the hospital claiming that she was wrongfully discharged in violation of public policy. The hospital filed a motion seeking to dismiss the claim on the ground that Cappiello was an at-will employee and that under these facts there was no public policy to support her claim of wrongful discharge. In Cappiello v. Fitzsimmons (8/2/05) the Connecticut Superior Court recognized a public policy exception to the at-will employment doctrine where an

employee seeks to protect the health and safety of a patient by adhering to the public health code and, therefore, denied the hospital's motion. The court noted that Cappiello would have jeopardized her nursing license for failing to follow professional standards if she had allowed the surgeon to use his own instruments.

Court Dismisses Claims by Unions that City and State Oversight Board Unconstitutionally Changed Retiree Pension and Medical Benefits

In AFSCME Local 818 v. City of Waterbury (9/21/05) the U.S. District Court for Connecticut dismissed claims filed by several unions representing current employees of the City of Waterbury that the City and the Waterbury Financial Planning and Assistance Board impaired their contract rights and took those rights without just compensation in violation of article I and the fifth and fourteenth amendments to the U.S. Constitution. The court found that, in order to address the severe economic problems facing the City, the state legislature enacted a special law that created the State Oversight Board and granted it special labor powers to issue awards changing the terms of expired collective bargaining agreements. The State Oversight Board held hearings and issued awards that reduced the employees' pension accrual rate, reduced their salary level calculation, eliminated their medical insurance premium subsidization, and increased their medical co-payments. The unions argued that the City and the State Oversight Board violated the Constitution by changing their benefits. In dismissing the unions' claims, the court explained that, under the collective bargaining agreements, the rights of current employees to pension and retiree medical benefits were not vested; rather, they must be determined at the time of retirement. Because none of the unions represented any retirees, the court ruled that those rights could be changed through the interest arbitration process conducted by the State Oversight Board. The State Oversight Board is represented by Robinson & Cole.

Jury May Determine Lost Wages Award in Title VII Case

Sheryl Broadnax, a former firefighter for the City of New Haven, sued the City alleging gender discrimination, hostile work environment, and retaliation under Title VII, as well as claims concerning equal protection and free speech. In closing arguments to the jury, Broadnax requested $30,000 per year from the time of judgment until achieving retirement age as damages in the form of lost wages. The City of New Haven did not object. The jury ultimately awarded Broadnax $1,446,772, which included $965,571 in lost wages. The City appealed. On appeal, the City argued that lost wages are an equitable remedy and, as such, should not have been determined by the jury. In Broadnax v. City of New Haven (7/20/05) the U.S. Court of Appeals for the Second Circuit acknowledged that lost wages generally are not subject to determination by a jury, but ruled that the City's failure to object to Broadnax's request during closing arguments implied its consent to a jury determination on this issue. The appeals court also noted that Broadnax's complaint sought a jury determination on all issues and, therefore, the City had notice and consented to a jury determination on her claim for lost wages.