ROBINSON & COLE LLP
Labor, Employment & Benefits

Title VII Protections Do Not Extend to Non-U.S. Citizens Working Overseas

Vladimir Shekoyan, a lawful permanent resident of the U.S., worked for Sibley International. Shekoyan had a 21-month employment contract with Sibley that listed his place of employment in the Republic of Georgia. Shekoyan claims that, during his employment, his supervisor discriminated against him on the basis of his national origin by saying that he was not a "real American," knocking his accent, and making racist comments about people from former Soviet states. At the end of his 21-month contract, Shekoyan was terminated. His termination letter states that he was not re-hired due to a change in staffing requirements.

Shekoyan sued Sibley, claiming employment discrimination under Title VII. The district court dismissed Shekoyan's claims finding that Title VII did not apply to non-U.S. citizens employed outside the U.S. In Shekoyan v. Sibley International (6/3/05), the U.S. Court of Appeals for the D.C. Circuit upheld the judgment of the district court. The appeals court agreed that Title VII does not extend to a non-U.S. citizen employed overseas and that Shekoyan's place of employment was the Republic of Georgia, not the U.S. The appeals court explained that, even though Shekoyan was hired and trained in the U.S. and many decisions regarding his employment were made in the U.S., he lived and worked in the Republic of Georgia throughout his employment with Sibley International.

Employer Penalized when HR Manager Failed to Preserve Electronic Evidence in Bonus Dispute

Donald Arndt worked as a senior vice president at First Union National Bank. He was paid an annual salary of $90,000 and a bonus. After working for five years, First Union reduced his bonus rate by about half. Arndt contacted Deidre Bradshaw, First Union's human resources manager, and complained. But First Union did not restore Arndt's bonus. Arndt resigned, told Bradshaw that he would be filing a claim against First Union, and sued for breach of contract and violation of the North Carolina wage statutes. During the trial, the court instructed the jury that, because e-mails and other materials concerning his bonus were not preserved by First Union, the jury could infer that those e-mails and materials would be damaging to the bank. The jury awarded Arndt $837,243.40 plus interest and costs. First Union appealed.

In Arndt v. First Union National Bank (6/7/05), the North Carolina Appeals Court agreed with the trial court in determining that Arndt had offered evidence to show that First Union had allowed the destruction of relevant e-mails, electronic evidence, and documents while it was on notice of his claim and let the jury verdict stand. The appeals court explained that, although Bradshaw knew that Arndt would be filing a claim, she did not make any efforts to preserve any e-mails or the hard drive of his computer after he left.

Former Employee Defaulted after Destroying Evidence in Theft of Trade Secrets Case

Communications Center sued its former employee, Matthew Hewitt and a corporation he established, alleging misappropriation of trade secrets, tortious interference, unfair competition, and related claims. During the lawsuit, Communications Center requested that Hewitt produce a mirror image of the hard drives from his computers. Hewitt produced three compact discs that were supposed to be mirror images of his three computer hard drives, but they were not. Two months later, Hewitt produced an additional 10 CDs to Communications Center but, again, the CDs were not mirror images of his hard drives and some of them were unreadable. Three months later, Hewitt produced the hard drive from his primary computer, but it contained only standard system files and no deleted files.

The same month he began producing the CDs, Hewitt had installed a program called Evidence Eliminator on his hard drives. Hewitt ran Evidence Eliminator several times, claiming that he wanted to destroy evidence of an on-line affair that he had with a person other than his wife and to prevent disclosing embarrassing pornographic internet sites that he had visited. Nevertheless, pornographic images remained on the mirror images that were ultimately produced to Communications Center. The log that was created when Evidence Eliminator was run revealed that files other than Hewitt's internet histories were destroyed. The destroyed files appeared to be directly relevant to the issues in the case. Based on the destruction of evidence by Hewitt, in Communications Center, Inc. v. Hewitt (4/5/05) the U.S. District Court for California entered a default (which barred Hewitt from contesting liability) and ordered that Communications Center be awarded approximately $145,000 for expenses and costs incurred in prosecuting its motion against Hewitt for destruction of evidence.

Employee of Private Corporation Protected from Retaliation for Whistleblowing

Dean Chenarides was employed as Director of Human Resources at Best Foods and Entenmanns's. In September 2000, he was assigned to investigate reports of fraud at one of the company's facilities. Chenarides claims that his investigation revealed that some of the employees were engaging in fraudulent activities that likely were occurring at other locations as well. His supervisors told him to stop the investigation and subsequently terminated him.

Chenarides sued Best Foods claiming that he was wrongfully discharged in violation of public policy that does not allow retaliatory actions against employees who report fraudulent conduct. Best Foods asked the court to dismiss the wrongful discharge claim arguing that Connecticut only recognizes such claims by employees of public corporations and that Best Foods was a privately-held company. InChenarides v. Best Foods Baking (2005), the Connecticut Superior Court refused to dismiss Chenarides' wrongful discharge claim. The court considered the statute that protects employees of publicly-held corporations who are discharged for internal or external whistle blowing and noted that Best Foods was not a publicly-held corporation. Nevertheless, the court found that Connecticut's public policy supported a cause of action for wrongful discharge in violation of public policy in the case of an employee of a privately-held corporation who reports fraud.

Working from Home May Be a Reasonable Accommodation under the Massachusetts Handicap Law

Doreen Smith suffered from polio as a child, leaving her paralyzed in one leg and with diminished use of the other. As an adult, Smith was diagnosed with post-polio syndrome, a degenerative condition that would eventually compromise her ability to perform daily functions and live independently. She uses a scooter to move around and transports it in a large van. Smith worked out of Bell Atlantic's Waltham, Massachusetts office, approximately a 20-minute commute from her home. Bell Atlantic transferred Smith to its Marlboro, Massachusetts office, which imposed a longer commute and where there were not a sufficient number of handicapped-designated parking spaces for her van. Following additional surgeries and medical leave, Bell Atlantic allowed Smith to work from her home two days per week and either from home or in the Marlboro office on the other days. Bell Atlantic did not supply Smith with any home office equipment. Eventually, Smith bought her own home office equipment but was not provided with access to Bell Atlantic's computer network nor was she able to receive company technology support. Although Smith could have performed most of her work at home, her supervisor failed to communicate with her electronically and instead would leave notes on Smith's desk that she would need to retrieve by traveling to the office. In addition, her supervisor sometimes failed to call Smith at home to participate in conference calls. As a result of having to travel to the office frequently, as well as other strains placed on her by the lack of support she received, Smith had additional surgeries and went out on total permanent disability. She sued Bell Atlantic claiming handicap discrimination.

After a trial, a jury awarded Smith more than $1.5 million for emotional distress, future medical expenses, and lost future wages due to her physical deterioration that had been exacerbated by Bell Atlantic's failure to accommodate her. The judge granted Bell Atlantic's motion to reduce the award and the court entered judgment in favor of Smith for $207,000 in damages for the emotional distress that she suffered during her employment. Smith appealed. In Smith v. Bell Atlantic

(6/10/05), the Massachusetts Appeals Court affirmed the trial judge's decision. The appeals court acknowledged that, while a company generally has no obligation to accommodate an employee by agreeing to a work-from-home arrangement or to provide home office equipment, Bell Atlantic had allowed other managers to work from home and had agreed to a work-from-home arrangement for Smith but had not adequately implemented it.

Employer May Not Inquire into Applicant's Sealed Juvenile Record

Karl Hanson applied for a job with the Massachusetts Department of Social Services. After an interview, he signed a release form allowing the DSS to conduct a criminal records check on him. Soon after, DSS Area Director Jacqueline Gervais called Hanson and told him that, although he was a top candidate for a social worker position, she could not hire him because the background check revealed that he had a sealed juvenile record. Gervais asked Hanson to reveal the contents of the sealed record, but Hanson refused. The DSS then filled the position with another candidate. Hanson sued the DSS.

In Hanson v. Massachusetts Department of Social Services (5/4/05), the Massachusetts Commission Against Discrimination awarded Hanson $20,000 in damages for emotional distress suffered from the DSS' unlawful discrimination against him. The MCAD found that Massachusetts law prohibits an employer from inquiring into an individual's sealed juvenile record and that Hanson's refusal to reveal such information should not have disqualified him from the position.