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IN THIS ISSUE

- Fifth Circuit Examines Employee Rights to Involuntary FMLA Leave
- Title VII Permits Sex Discrimination Claims, But Not Sex Stereotyping Claims by Transsexuals
- Retirees Lack Vested Right to Lifetime Health Benefits where Summary Plan Description Is Silent
- Deduction of Credit Card Fees from Server Tips is Permissible under the FLSA
- Employers May Require Exempt Employees to Work More than 40 Hours in a Week and Make Up Lost Time Due to Personal Absences of Less than One Day
- Employers May Not Deduct Wages for Damage to or Loss of Company Equipment from Exempt Employees

Fifth Circuit Examines Employee Rights to Involuntary FMLA Leave

Jennifer Willis worked for Coca Cola Enterprises, Inc. Willis called in sick and, during the same call, notified her supervisor that she was pregnant. However, Willis did not indicate that her sickness was related to her pregnancy. The following day, a Tuesday, Willis called her supervisor seeking to return to work, but was told that she must present a medical release from her doctor before Coca Cola would allow her return. Willis indicated that she had a doctor's appointment "on Wednesday" but failed to clarify that it was the Wednesday of the following week. Willis had no contact with the company until the Thursday of the following week, at which time she learned that her employment had been terminated consistent with the company's "No Call/No Show" attendance policy because she had been absent for three or more consecutive days without notifying her supervisor. Willis filed a lawsuit against Coca Cola alleging a violation of the Family and Medical Leave Act, among other claims. According to Willis, the company placed her on an involuntary FMLA leave when it told her that she was not permitted to return to work without a medical certificate and then violated the FMLA by terminating her employment. The court granted the company's motion for summary judgment and Willis appealed the decision.

In Willis v. Coca Cola Enterprises, Inc. (3/31/06), the U.S. Court of Appeals for the Fifth Circuit

ruled that Coca Cola did not violate the FMLA. Stating "we cannot assume that every time an employer chooses to place an individual on leave that the FMLA is triggered," the appellate court ruled that an absence may be designated as involuntary FMLA leave only if the employee provides notice of a "serious health condition." Because Willis testified that she did not tell her supervisor that her sickness was due to her pregnancy, the appellate court concluded that the company did not have notice of a serious health condition. As such Willis' leave did not constitute involuntary FMLA leave and Willis was not entitled to the job protection offered by the FMLA. Therefore, Coca Cola did not violate the FMLA by terminating Willis' employment. [back]

Title VII Permits Sex Discrimination Claims, But Not Sex Stereotyping Claims by Transsexuals

Diane Schroer is a male-to-female transsexual. Schroer was born David Schroer, and lived a substantial part of her life as a male. After Schroer was diagnosed with gender dysphoria, she began to undertake steps for sex-reassignment. Before Schroer changed her name or began presenting as a female, however, she applied for employment with the Congressional Research Service of the Library of Congress. Schroer, who was highly qualified for the position, received an offer of employment, and accepted the offer.

Prior to beginning employment, Schroer explained that she was receiving treatment for gender dysphoria and would present herself as a woman when she started working at Congressional Research Service. The next day Schroer was informed that she would not be a good fit and the offer of employment was revoked. Schroer filed a lawsuit against James Billington, the Librarian of Congress, alleging sex stereotyping and sex discrimination in violation of Title VII of the Civil Rights Act of 1964. Billington moved to dismiss Schroer's lawsuit, arguing that she had failed to state any claim for which relief could be granted.

In Schroer v. Billington (3/31/06), the U.S. District Court for the District of Columbia dismissed Schroer's sex stereotyping claim, but allowed her to proceed with her sex discrimination claim. The court ruled that Title VII protects individuals on the basis of their failure to conform to gender stereotypes only where an individual can demonstrate disparate treatment based on sex stereotyping. Here, Schroer was not seeking acceptance as a man with feminine traits, but instead, sought acceptance as a female, and therefore could not establish disparate treatment.

On the other hand, the court ruled that discrimination against transsexuals because they are transsexuals constituted discrimination "because of sex" and therefore allowed Schroer to proceed on this basis. In reaching this decision, the court explained that there was a difference between "sexual preference" and "sexual identity" and concluded that even though Title VII does not prohibit discrimination on the basis of sexual orientation, it does offer protection against discrimination against transsexuals. [back]

Retirees Lack Vested Right to Lifetime Health Benefits where Summary Plan Description Is Silent

Employees of the New York City Transit Authority were members of the Transport Workers Union of Greater New York, Local 100. Upon retirement, Transit Authority employees were eligible for health and life insurance coverage through the Union as well as the Transit Authority. The summary plan description for the Union's employee benefit plan did not include a specific reservation of the right to amend or terminate coverage, nor did it explicitly promise lifetime benefits.

A letter from the Union president modified the existing health plan to provide that a surviving spouse of a retiree who died would continue to receive coverage for the remainder of the surviving spouse's life. Years later, the Union eliminated retiree health benefits for the retiree and his/her spouse if the retiree received health insurance from another employer. Several retired transit authority employees and their spouses filed a lawsuit against the Union alleging this elimination constituted a wrongful denial of benefits under the Employee Retirement Income Security Act. The district court dismissed all of the claims and the retirees and spouses appealed.

In Bouboulis v. Transport Workers Union of America (3/14/06), the U.S. Court of Appeals for the Second Circuit ruled that the retirees did not have a vested right to lifetime health benefits from the Union. The appellate court concluded that there was no affirmative written language in either the summary plan description or the letter from the Union president that could be interpreted as a promise to vest lifetime health benefits. According to the court, the belief by the retirees and their spouses that they had been guaranteed lifetime healthcare coverage and the fact that such benefits had been provided for years did not create a promise to vest. Because the summary plan description was silent on the issue, the retirees and spouses could not pursue their wrongful denial of benefits claim. [back]

Deduction of Credit Card Fees from Server Tips is Permissible under the FLSA

As a waitress at Miller's Pub, Lisa Gillis received an hourly wage supplemented by tips from customers she served. Miller's Pub accepted credit card payments from customers, but the credit card companies charged Miller's Pub a servicing fee to process the charge made on credit cards. Miller's Pub instituted a practice of deducting the service fee from its servers' tips. Servers were notified of this process and the amount deducted from their tips never exceeded the amount of the servicing fee charged by the credit card company. [back]

Gillis filed a lawsuit against Miller's Pub claiming that this practice violated the Fair Labor Standards Act, the Illinois Minimum Wage Act, and the Illinois Wage Payment and Collection Act. Gillis argued that the tips belonged to the servers under the FLSA. In Gillis v. Twenty Three East Adams Street Corp. (3/6/06), the U.S. District Court for Illinois ruled that that a customer gratuity becomes "a tip" only after it is liquidated by the employer, which includes the payment of any credit card fees. In reaching this decision, the court relied, in part, upon the Department of Labor's Field Operations Handbook, Fact Sheet No. 15, and various opinion letters as persuasive support that an employer may legally deduct a credit card fee from a server's tip, so long as the deduction does not exceed the fee charged by the credit card company.

Employers May Require Exempt Employees to Work More than 40 Hours in a Week and Make Up Lost Time Due to Personal Absences of Less than One Day

The Wage & Hour Division of the U.S. Department of Labor recently released an opinion letter clarifying that an employer can require exempt employees to work a specific work schedule in excess of 40 hours. Relying on the preamble of the Fair Labor Standards Act regulations, the DOL explained that an employee's exempt status is not affected by an employer's decision to establish a specific work schedule. Similarly, the DOL also explained that the number of hours an exempt employee may be required to work is a matter to be determined between the employer and the employee.

The DOL also opined that an employer may require exempt employees to make up lost time due to personal absences of less than one day. However, the DOL also explained that the failure of an employee to make up such time as required cannot constitute the basis of a disciplinary suspension for which the employee's pay is docked one or more full days. [back]

Employers May Not Deduct Wages for Damage to or Loss of Company Equipment from Exempt Employees

The Wage & Hour Division of the U.S. Department of Labor also released an opinion letter stating that employers may not take deductions for damage to or loss of company tools or equipment, including cell phones or laptop computers, from the salary of an exempt employee. The DOL explained that the salary test for exempt status requires an employee to receive a predetermined amount that is not subject to reduction due to the quality or quantity of work performed. According to the DOL, a deduction for the damage or loss of equipment would constitute a reduction due to the quality of work. According to the DOL, because the Fair Labor Standards Act does not allow an employer to fine an exempt employee for damage or loss of equipment, doing so could result in a loss of exempt status.

The DOL also cautioned that although deductions from non-exempt employees for damage or loss of company equipment may be permissible, such deduction or fine cannot result in the non-exempt employee receiving less than the minimum wage or a loss of overtime pay. [back]

For more information, please contact Stephen Aronson or Erin O'Brien Choquette or phone either of them at 800-826-3579.
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