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Labor, Employment & Benefits e-News

MARCH 20, 2006

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Requiring Employee to Work Saturdays Could Constitute Religious Discrimination under Title VII

Jeff Carter worked at Robert Bosch Corp., an automobile parts manufacturer. Carter was a member of the Old Path Church of God, which observes the Sabbath from sundown on Friday until sundown on Saturday. During the 25 years that Carter worked for Bosch, his supervisors accommodated his request not to work on the Sabbath and found volunteers to fill in for him whenever necessary. More recently, however, the machine shop began operating 24-hours per day, 7-days per week, and each employee was assigned to work overtime. Carter was assigned a mandatory overtime shift from Friday night through Saturday morning, which conflicted with his observance of the Sabbath. After being fired for four unexcused Saturday absences, Carter filed suit against Bosch, claiming Bosch discriminated against him on the basis of his religion in violation of Title VII of the Civil Rights Act of 1964. The trial court dismissed his case and Carter appealed.

In EEOC and Jeffrey Carter vs. Robert Bosch Corp. (2/21/06), the U.S. Court of Appeals for the Sixth Circuit reversed the trial court's dismissal of the case and remanded it for trial. The appellate court explained that the reasonableness of an employer's attempt to accommodate an employee's religious beliefs must be determined on a case-by-case basis. Because there was a factual dispute over whether Carter was permitted to trade shifts, the appellate court stated that a jury

must determine whether the employer had met its obligations under Title VII by demonstrating that it was unable to reasonably accommodate an employee's religious beliefs without undue hardship to its business. [back]

Employee Can Proceed with Whistle-Blowing Claim under FIRREA

Russell Lippert worked as a senior vice president and director of risk management at Community Bank. Almost immediately after being hired, Lippert began sending memos to the Bank's local presidents requesting loan information. He later sent a letter to the Federal Deposit Insurance Corporation complaining that the Bank's management was resisting his recommendations. Lippert criticized the Bank's grading of delinquent loans and the level of the Bank's loss reserve. In subsequent internal memos, Lippert advised the chairman and members of the audit committee of his concerns about the Bank's practices. A few months after Lippert started working at the Bank, the board of directors unanimously approved a motion to allow the Chief Executive Officer to take whatever action he deemed appropriate regarding Lippert's employment. Lippert's employment was terminated the following day.

Lippert filed an action against Community Bank, claiming that he was fired in retaliation for his whistle-blowing statements to the FDIC, in violation of the Financial Institutions Reform, Recovery & Enforcement Act of 1989. The trial court dismissed the claim on the basis that Lippert failed to demonstrate that the CEO or board of directors actually knew that Lippert had communicated protected information to the FDIC. In Lippert v. Community Bank, Inc. (2/8/06), the U.S. Court of Appeals for the Eleventh Circuit overturned the lower court's decision and remanded the case for trial. The appellate court concluded that the CEO knew that Lippert had suggested significant changes in the Bank's procedures and that a reasonable jury could find that the CEO also knew that Lippert had communicated his recommendations to the FDIC before he was terminated. As a result, the appellate court concluded that there was enough evidence for a jury to conclude that Lippert was terminated as a result of his having communicated his concerns about the Bank to the FDIC. [back]

Employee who Deleted Files when He Quit May Have Violated Anti-Hacker Law

International Airport Centers lent its employee, Jacob Citrin, a notebook computer to record the data he collected in the course of identifying potential acquisition targets. Sometime later, Citrin quit IAC to go into business for himself. Before returning the laptop to IAC, Citrin deleted all of the data contained in it by loading onto the computer and running a secure erase program. The program wrote over the deleted files in order to prevent their recovery.

IAC filed suit against Citrin alleging that he violated the Computer Fraud and Abuse Act, which prohibits transmission of a program that intentionally and without authorization causes damage to a protected computer. Citrin argued that the deletion of a file is not a transmission and that, therefore, the CFAA did not apply. The trial court dismissed IAC's action for failure to state a claim. In IAC v. Citrin (3/8/06), however, the U.S. Court of Appeals for the Seventh Circuit reversed the lower court's decision and reinstated the suit. The appellate court concluded that the transfer of the secure erase program onto the computer could be considered a transmission, and that Citrin acted without authorization when he destroyed the files. [back]

Retaliatory Act in a Retaliation Claim under Title VII Need Not Be Related to Employment

During the course of his employment with the Federal Bureau of Investigation, Special Agent Donald Rochon alleged that he was subjected to racial harassment. After filing suit against the

FBI, Rochon entered into a settlement agreement in which the FBI agreed not to take any retaliatory action against Rochon in the future. Sometime later, the FBI received credible death threats against Rochon and his wife but did not investigate. Nine years later, when Rochon learned that the FBI had failed to investigate the threats, he filed suit against the FBI alleging retaliation. The trial court dismissed Rochon's claim, concluding that Rochon had not suffered an adverse employment action and, therefore, was not the victim of retaliation under Title VII.

In Rochon v. Gonzalez (2/28/06), the U.S. Court of Appeals for the District of Columbia Circuit overturned the trial court, concluding that Title VII does not require that the employer's act of retaliation be related to the plaintiff's employment. The appellate court explained that in order to support a claim of retaliation under Title VII, a plaintiff must simply demonstrate that the employer's action would have been "material to a reasonable employee." The appeals court stated that any act by an employer that might dissuade a reasonable employee from making a discrimination claim pursuant to Title VII may be an unlawful retaliatory act. [back]

Employee's Allegations of Sexual Stereotyping, Without More, Are Insufficient to Support Sex Discrimination Claim under Title VII

When Southern Health Services eliminated the position of Chief Operating Officer and terminated the employment of its COO, Jennifer Adkins, Adkins filed a lawsuit, claiming that she had been discriminated against on the basis of her sex in violation of Title VII. The trial court granted summary judgment in favor of the employer, concluding that Adkins had failed to state a case of discrimination. The court noted that, after the COO position was eliminated, Adkins' job responsibilities had been divided among three people, two of whom were women. The trial court also ruled that Adkins had failed to establish that her job performance met her employer's legitimate expectations because, despite generally positive evaluations, Adkins had repeatedly been advised about her poor leadership and management skills. Adkins claimed that Coventry's dissatisfaction with her management style reflected the company's dislike of her unfeminine manner and her failure to meet the company's expectations regarding the way women should behave. The trial court, however, concluded that Adkins' management problems constituted a legitimate non-discriminatory reason for Coventry's action and that Adkins had failed to demonstrate pretext. Adkins appealed.

In Adkins v. Coventry Health Care, Inc. (3/1/06), the U.S. Court of Appeals for the Fourth Circuit affirmed the dismissal. The appellate court agreed that Adkins had failed to establish a case of discrimination. It also ruled that Adkins' bare allegations of sexual stereotyping, without more, was insufficient to demonstrate pretext sufficient to overcome summary judgment. [back]

Employers May Not Make Employee's Immigration Status an Issue in Discrimination Lawsuits

The EEOC sued KCD Construction, claiming that KCD harassed its Hispanic employees on the basis of their national origin. KCD argued that, during the court case, it had a right to inquire into the immigration and citizenship status of the employees as part of its defense to the EEOC lawsuit. The EEOC sought a protective order to prohibit the discovery of the employees' citizenship, immigration, and work permit status. In EEOC v. KCD Construction (2/28/06), the U.S. District Court for Minnesota granted the EEOC's motion. In a subsequent decision, the court also ruled that, when suing on behalf of a class of victims of discrimination, the EEOC is not required to comply with all of the procedural rules applicable to private parties seeking class action status. [back]

For more information, please contact Stephen Aronson or Erin O'Brien Choquette or phone either of them at 800-826-3579. Visit our Labor, Employment and Benefits website at www.rc.com. To view back issues, visit our searchable archives. If you would like certain information covered in future communications, let us know. We welcome your feedback.