



McKENNA EMPLOYMENT BULLETIN

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LEDBETTER FAIR PAY ACT PROTECTS ALL EMPLOYEES

In Groesch v. City of Springfield, Ill., No. 07-2932, U.S. Court of Appeals, Seventh Circuit, March 28, 2011, the Court held that white police officers were entitled to pursue their Title VII and 42 U.S.C. §1983 reverse race discrimination claims where the white officers alleged that the defendant-City enacted in 2000 an ordinance that granted African-American police officers the ability to return to the police force at the same salary and seniority levels as at the time they initially left the force while requiring white police officers to come back to the force at their beginning salary and their beginning seniority levels. The Seventh Circuit held that under the Ledbetter Fair Pay Act of 2009 the white police officers had a new and separate cause of action for each paycheck in which their pay differential was based on discrimination and the act applied to all claims pending on May 17, 2007 or later.

YOUR HARASSMENT OF ONE GROUP MAY BE HARASSMENT TO ANOTHER GROUP

In Hernandez v. Yellow Transportation, Inc., 2001 WL 1796366 (5th Cir. 2011), there was evidence of incidences of workplace hostility towards black employees. These incidents were neither physically threatening nor humiliating to the Hispanic workers who brought race-based hostile work environment claims. Nor did the incidents unreasonably interfere with the Hispanic workers' job performance. Therefore, the Court held that these incidents were insufficient to show a hostile work environment for the two Hispanic employees.

The Court held, however, that a member of one racial minority may rely on evidence of workplace harassment against members of a different racial minority to support a race-based hostile work environment claim. To do this, the Court held there must at least be evidence that the hostility towards the racial group different than that of the plaintiff is in some fashion probative of a claim of hostility towards the plaintiff's category of workers.

INCONSISTENT STATEMENT BY EMPLOYEE SINKS AGE DISCRIMINATION CLAIM

In Simmons v. Sykes Enterprises, Inc., 2011 WL 2151105 (10th cir. 2011), the employer terminated the employee after the employer's investigation into the improper disclosure of another employee's confidential medical information determined that the terminated employee was the only possible source of the disclosed information. In addition to that investigation, the employee provided inconsistent statements regarding the disclosure of the medical information

during the investigation. The employer, therefore, reasonably determined that the employee could not be trusted with confidential information. Based on these facts, the Court held that the employee who worked as an assistant human resources representative failed to establish that the employer's legitimate reason for terminating the employee was a pretext for age discrimination.

EMPLOYEE VIOLATION OF WORK RULE DEFEATS RETALIATION CLAIM

In Davis v. Time Warner Cable of Southeastern Wisc., L.P., No. 10-1423, 7th Cir, Decided July 5, 2011, the employee alleged that the employer terminated the employee and then reinstated him under a less favorable compensation plan because of his race and in retaliation for registering an internal discrimination claim. The employer's defense was that the employee was initially terminated due to the employee's violation of a work rule that prohibited the employee and others from seeking compensation on a certain type of customer transaction.

The Court ruled that judgment was correctly entered for the employer because the plaintiff did not present evidence establishing either that he did not commit the infraction or that the employer treated more favorably others who committed a similar infraction. The Court also found that even though the termination came within 14 days of the employee's complaint, that was not sufficient by itself to withstand summary judgment where the employee failed to present evidence to cast doubt on the employer's explanation for the employee's termination. The Court also held that the new compensation plan was not evidence of discrimination because it was applied to all of the employee's co-workers.

REASONABLE ACCOMMODATION CAN MEAN REASSIGNMENT OF TASKS AMONG A CREW

In Miller v. Illinois Dept. of Transp., 2001 WL 1756119 (7th Cir. 2011), an employee who had a fear of heights alleged that his employer regarded him as disabled under the ADA and then terminated him. The employee had a fear of heights but alleged that he could perform the essential functions of his job as a highway maintainer on a bridge crew with reasonable accommodations. The employee presented evidence that it was the normal course for individual members of the bridge crew to substitute and reassign tasks among themselves according to individual abilities, preferences and limitations and the crew had done so for the plaintiff and others for years. The Court found that this reassignment of tasks was a reasonable accommodation and that even though working at heights was an element of the employee's job, the substituting and reassignment of tasks was a reasonable accommodation for the employee's fear of heights.

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