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EMPLOYER CHANGES HIS STORY FOR THE EMPLOYEE'S TERMINATION AND IS DENIED SUMMARY JUDGMENT

In E.E.O.C. v. C. G. Schmidt, Inc., 2009 WL 3754160 (E.D. Wis. 2009), the Court held that the employer was not entitled to summary judgment on the terminated employee's Title VII retaliation claim. The Court ruled that the plaintiff provided enough evidence to infer a causal link between his protected complaint of race discrimination and his termination. It was not the passage of two months between the employee's filing of that complaint and his termination which provided the causal link. It was the employer's characterization of the termination as a "lay off" rather than a firing. The Court ruled that fact issues existed as to whether the employer had been honest about the employee's employment record, specifically his failure to report absences and incompetent job performance, and which of the employer's ever-changing rationales for the termination decision was the true one. In addition, fact issues existed with regard to the role of a supervisor who commented he could be the employee's "worst enemy," and whether that comment, made only two months before the employee's firing, showed retaliation.

SEXUAL HARASSMENT AND TERMINATION AFTER INFORMAL COMPLAINT PLEADS RETALIATION

In Morris v. David Lerner Associates, --- F.Supp.2d ----, 2010 WL 274361 (E.D.N.Y.,2010), a former employee pled sufficient facts to show a plausible claim that she was subjected to a hostile work environment by her supervisor, who was also the president of the company, and then retaliated against for complaining.

In the complaint, the plaintiff alleged a series of sex-based comments that were allegedly made by her boss. The complaint alleged that these comments were not one-time occurrences. The complaint alleged that, on numerous occasions, her boss propositioned her. Additionally, the complaint alleged that her boss "often made [her] 'twirl' for him so he could see how she looked 'from all angles.'" The boss allegedly had another assistant purchase women's clothes and shoes for her that she did not want. The complaint also alleged that her boss "frequently suggested that [the plaintiff] kiss him in the morning...."

The plaintiff complained to her boss that she was being treated differently than male brokers. Only days after her discussion with her boss, the plaintiff was terminated.

The District Court found that the complaint sufficiently alleged a plausible hostile work environment claim. The District Court also held that an informal complaint to a supervisor about perceived discriminatory treatment is protected activity under Title VII and the close temporal proximity between plaintiff's protected activity and her termination raised a plausible inference that retaliation for the protected activity was the cause of her termination. As such, the district court held that the plaintiff had adequately pled gender discrimination and retaliation.

FIVE POUND LIFTING RESTRICTION IS NO DISABILITY UNDER THE ADA

In Biagas v. District of Columbia, --- F.Supp.2d ----, 2010 WL 271127 (D.D.C.,2010), a social worker sued her former employer, the District of Columbia, claiming discrimination in violation of the Americans with Disabilities Act (ADA). The District moved for summary judgment. The District Court held that the employee was not "disabled" for purposes of the ADA.

The plaintiff was employed by the District through its Child and Family Services Agency ("the

Agency") as a social worker, where her primary responsibility was to assist neglected or abused children. Part of her job required her to make house calls to investigate claims of neglect or abuse; in rare cases, she was required to physically remove children from imminently dangerous surroundings. The plaintiff underwent several surgeries to address underlying health issues including obesity, hypertension, congestive heart failure, and diabetes and was off work for several months. When the plaintiff returned, she had a ten pound weight lifting restriction that was later reduced to a five pound weight lifting restriction. The plaintiff went on medical leave, did not accept a desk job and eventually quit.

The employee filed a lawsuit claiming that the District violated the ADA by denying her reasonable accommodations for her lifting disability. The District Court agreed.

The District Court held that the plaintiff failed to produce sufficient evidence that her lifting restriction was as severe as she alleged it to be. She also failed to provide sufficient evidence to show that she was "substantially" limited in a "major life activity." The District Court noted that several cases had held that weight restrictions of seven to twenty pounds did not qualify as a disability. Given the limited facts and the prevailing interpretation of the 1990 ADA, the District Court determined that no reasonable jury could find that the plaintiff was substantially limited in a major life activity and thus protected by the ADA.

The District Court addressed this case as a pre-ADA Amendments case. Under the Amendments to the ADA, similar restrictions in lifting may qualify as a disability.

BANKRUPTCY CODE

The Bankruptcy Code prohibits private employers from terminating the employment of, or discriminating against, an individual who has been a debtor. 11 U.S.C. § 525(b).

A recent case extended this protection to individuals who intend to file for protection under the Bankruptcy Code but have not done so yet. In Robinette v. Westconsin Credit Union, 2010 WL 681406 (W.D., Wisconsin), an employee filed suit against an employer, claiming that the employer terminated her because she was going to file a bankruptcy case. The plaintiff told her supervisor that she and her husband had retained an attorney and were going to file a bankruptcy petition. The plaintiff and her husband had a loan from the employer and planned to include that debt in their bankruptcy petition. The next day the plaintiff's supervisor told the plaintiff that she was terminated because she was "filing for bankruptcy," which would not make the company look good.

The District Court in Wisconsin held that anti-discrimination provision applied regardless of whether the individual had filed the Petition for Bankruptcy Protection.

SEVERITY WINS OUT OVER "SELDOM USED" AS AN ESSENTIAL JOB FUNCTION

In Hennagir v. Utah Dept. of Corrections, 2009 WL 4068331 (10th Cir. 2009), the Court held that the completion of required physical safety training was an "essential job function" for an employee. The employee was part of a prison medical staff. The prison required all personnel who had contact with inmates to complete the physical safety training and the plaintiff had regular contact with the inmates as part of her job. The employee claimed that she never had to use safety training techniques during her entire eight years of employment at the prison. However, the Court held that the potential consequences of an inmate attack against any of the staff were incredibly severe and, therefore, completion of the required physical safety training was an essential job function.

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