U.S. SUPREME COURT WILL RULE ON SAME SEX MARRIAGE

The U.S. Supreme Court will decide whether state bans on same-sex marriage are unconstitutional. The appeals are asking the Court to overturn bans in four states, Kentucky, Michigan, Ohio and Tennessee, and declare for the entire nation that people can marry, regardless of gender. The cases will be argued in April, and a decision is expected by late June. Ultimately, the ruling may have a significant impact on employee rights and benefits.

TRAVELING NURSE TERMINATED FOR SEIZURE DISORDER NOT AN ADA VIOLATION

In an EEOC enforcement action, a nurse for a home-health company, who was fired shortly after she had an epileptic seizure, failed to establish that she was terminated from her job as a field nurse in violation of the ADA. She was unable to drive after her seizure. Driving was an essential function of this particular position. EEOC v. LHC Group, Inc., 2014 U.S. App. LEXIS 23295 (5th Cir. Miss. 2014). Even though some nursing positions allowed for a portion of the day to be spent in the office, all positions required a current driver’s license. The Plaintiff could not meet that requirement for the job.

NO RACE DISCRIMINATION WHERE RECENT HIRES WERE OF THE SAME RACE

An African American job applicant at Foot Locker could not establish a prima facie case of discrimination where of the twenty-eight applicants hired from Foot Locker’s job fair, twenty-seven were African American and one was multiracial. There was no evidence that any Caucasian applicant was treated differently. Jenkins v. Foot Locker Inc., 2015 U.S. App. LEXIS 746 (6th Cir.) (6th Cir. Mich. 2015).

NO RETIREE CONTRIBUTION TO RETIREE HEALTH BENEFIT PLAN ENDS WITH THE EXPIRATION OF THE AGREEMENT WITH THE UNION

In M&G Polymers USA LLC, et al. v. Tackett et al., No. 13-1010, January 26, 2015, U.S. Supreme Court, M&G Polymers purchased a Polyester Plant and entered into a collective-bargaining agreement and related Pension, Insurance, and Service Award Agreement with the union. The agreement provided that certain retirees, along with their surviving spouses and dependents, would receive a full Company contribution towards the cost of health care benefits. Such benefits would be provided for the duration of the agreement, and the agreement was subject to renegotiation in three years. Following the expiration of those agreements, M&G announced that it would require retirees to contribute to the cost of their health care benefits. The retirees sued M&G, alleging that the P & I Agreement created a vested right to lifetime contribution-free health care benefits. The U.S. Supreme Court interpreted the collective bargaining
agreement and ruled that when a collective-bargaining agreement is unambiguous, its meaning must be ascertained in accordance with its plainly expressed intent. The Supreme Court ruled that under traditional contract principles, a court should not construe ambiguous writings to create lifetime promises. The court also found that contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement. Thus, the court ruled that the retirees did not have a vested right to lifetime contribution-free healthcare benefits.

**EMPLOYER EXPRESSION OF DISDAIN FOR THE EEOC PROCESS SUPPORTS A RETALIATION CLAIM**

In *Greengrass v. International Monetary Systems, Ltd.*, No. 13-2901, January 12, 2015, 7th Circuit, the plaintiff alleged in a Title VII action that her employer retaliated against her, a former employee, by naming her in the employer’s annual SEC filing as an individual who filed a “frivolous” EEOC complaint. The court held that the 3-month gap between the EEOC’s request to interview defendant’s employees about the plaintiff’s EEOC charge and the defendant’s naming of the plaintiff in its SEC filing was sufficient to establish a causal connection between the plaintiff’s filing of the EEOC complaint and the adverse action. The court found that even though there was a 14-month gap between the plaintiff’s filing of her EEOC charge and the SEC filing, this did not require a different result. This was especially true where the plaintiff presented evidence that the employer’s management expressed disdain for the EEOC process.

**NON-SPECIFIC CO-WORKER STATEMENT DOES NOT SUPPORT DISCRIMINATION OR RETALIATION**

In *Ani-Deng v. Jeffboat, LLC*, No. 14-2155, January 27, 2015, 7th Circuit, the plaintiff-employee alleged discrimination based on her sex and national origin as well as retaliation. The employer had demoted the plaintiff to a lower paid, less demanding welder job after the plaintiff experienced two episodes of dizziness and nausea symptoms while welding in confined spaces. The employer then laid off the employee as part of a general reduction in force and failed to recall her after the plaintiff failed to give timely notice of her intention to return to work. The only evidence the plaintiff submitted to support her discrimination and retaliation claims was an affidavit from a co-worker. The co-worker made only general claims of discrimination and failed to include facts demonstrating personal knowledge even as to those claims. Furthermore, the court found that the demotion was reasonable because of the employer's safety concerns.

**PRIOR AND SUCCESSOR ENTITIES BOTH LIABLE FOR DISCRIMINATION**

In *EEOC v. Northern Star Hospitality, Inc.*, No. 14-1660, January 29, 2015, 7th Circuit, the plaintiff alleged in a Title VII action that he was terminated in retaliation for making a discrimination complaint. Two entities were both controlled by the defendant-employer’s owner. The court held they could both be held liable under successor liability principles for the plaintiff’s damages. Even though at the time of trial, the prior entity had dissolved, the successor and prior entities were both exclusively owned by the defendant’s owner and they employed over half of the employer’s employees. Therefore, they satisfied the requirement for successor liability because: (1) the entities had notice of the instant lawsuit; (2) the defendant-employer could have provided relief for plaintiff prior to dissolution, but could not provide that relief after dissolution; and (3) both entities carried on the same business and at the same location. Further, the court held that the plaintiff should receive an award for increased tax liability. This was because the plaintiff’s receipt of his lump sum back pay award bumped him into a higher tax bracket than the bracket in which he would have been had he received his wages evenly throughout the time of the lawsuit.