WISCONSIN SUPREME COURT UPHOLDS PUBLIC-EMPLOYEE UNION RESTRICTIONS

On July 31, 2014 the Wisconsin Supreme Court upheld the constitutionality of a 2011 Wisconsin law that sharply curtails the collective bargaining rights of most public workers. While public employees may organize unions, their employers are not obligated to negotiate with them. In its 5-2 decision, the court said public workers in Wisconsin do not have a constitutional right to bargain collectively. The Wisconsin Supreme Court rejected the plaintiffs’ argument that several provisions of Act 10, which delineate the rights, obligations and procedures of collective bargaining, infringe upon employees’ constitutional right to freedom of association. The court ruled “no matter the limitations or ‘burdens’ a legislative enactment places on the collective bargaining process, collective bargaining remains a creation of legislative grace and not constitutional obligation. The First Amendment cannot be used as a vehicle to expand the parameters of a benefit that it does not itself protect.”

SEVENTH CIRCUIT HOLDS THERE IS NO SET TIME INTERVAL WHICH PRECLUDES A RETALIATION CLAIM

In Malin v. Hospiro, Inc., No. 13-2433, August 7, 2014, 7th Circuit, the plaintiff alleged that her employer demoted her as part of a 2006 reorganization in retaliation for her 2003 complaint of sexual harassment that was opposed by the manager who demoted her. There was a 3-year gap between her complaint of harassment and her demotion. The employer argued this was too long as a matter of law to support her retaliation claim. However, the plaintiff presented evidence that the same manager/decision-maker denied the plaintiff several promotions during the 3-year gap under circumstances where the plaintiff was viewed positively by other supervisors. This established a potential link between the complainant’s sexual harassment and the later demotion. The court held there is no set time interval that would preclude any retaliation action. Further, the plaintiff stated a FMLA claim where the plaintiff alleged that the demotion occurred in response to her taking FMLA leave and the record contained a question as to whether the employer’s demotion decision took place prior to the plaintiff’s FMLA leave.

YOUR PERFORMANCE REVIEWS CAN STOP A GENDER DISCRIMINATION CLAIM

In Fiero v. CSG Systems, Inc., 2014 WL 3511780 (8th Circuit 2014), the plaintiff alleged that the employer’s reason for her termination, poor performance, was a pretext for unlawful gender
discrimination. The plaintiff alleged that a male co-worker also had performance problems but was not terminated. The court held that in the absence of any other evidence of pretext, the female employee failed to demonstrate that her employer’s reason was a pretext. This was because while the male co-worker was warned about his poor attendance and performance, that male co-worker significantly improved his performance and subsequently received positive reviews. The female plaintiff, however, continued to fail to meet performance expectations.

IF YOU CHOOSE THE BEST QUALIFIED APPLICANT YOU PREVENT TITLE VII CLAIMS

In Matthews v. Waukesha County, 2014 WL 3600379, (7th Circuit 2014), the job applicant alleged that her employer’s reason for not hiring her, that she was not the best qualified applicant, was a pretext for race discrimination. However, the applicant admitted that none of the people involved in the hiring process even knew the race of the applicants when evaluating and grouping applications. The applicant also admitted that the interview selection process and the ultimate hiring decision were based upon finding the most qualified individual for the position. The applicant also admitted that the four categories of applicants were based upon how extensive and recent each applicant’s experience was and how relevant that experience was to the position.

YOUR PROTECTABLE INTEREST IN YOUR CLIENTS INFORMATION CAN SUPPORT A PRELIMINARY INJUNCTION AGAINST AN EX EMPLOYEE

In Scheffel Financial Services, Inc. v. Heil, 2014 IL App (5th) 130600, the Illinois Appellate Court held that a preliminary injunction based on the employer’s non solicitation clause in the employment agreement with a former employee was proper. The evidence was sufficient to support the preliminary injunction because the injunction did not represent an undue hardship to the ex-employee. It did not preclude him from working, but only from soliciting the company’s clients and from using or disclosing any of the company’s confidential information. Because the company had a protectable interest in its clients, the court ruled that irreparable injury caused by the ex-employee’s solicitation is presumed.

POOR WORK PERFORMANCE PRIOR TO FMLA LEAVE STOPS A FMLA ACTION

In Langenbach v. Wal-Mart Stores, Inc., No. 14-1022, August 4, 2014, 7th Circuit, an employee filed a FMLA action alleging that the employer terminated her for exercising her FMLA rights 5 months prior to the termination. The employer said the employee was terminated for job performance reasons. The record showed that the employee’s supervisors complained about her job performance before and after she left on FMLA leave of absence. There was also no evidence to support the employee’s Title VII claim alleging that the employer delayed the employee’s promotion on account of the employee’s gender. The plaintiff alleged that male co-employees were promoted in a faster time frame. However, the male co-employees had different educational backgrounds and more relevant job experiences than the plaintiff.