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YOU MAY NOT ASK ABOUT PERSONAL SOCIAL NETWORKING ACCOUNTS IN ILLINOIS

Illinois amended its Internet privacy law to prohibit employers from asking about applicants’ or employees’ personal social networking accounts.

But, the amendment does allow employers to request passwords and the like for professional accounts created for the business purposes of the employer. See Public Act 98-501(S.B. 2306).

WITHOUT NOTICE, AN EMPLOYER MAY NOT NEED TO ACCOMMODATE

In EEOC v. Abercrombie & Fitch Stores, Inc., 2013 WL 5434809 (10th Cir. 2013), an applicant filed a Title VII religious accommodation claim after she was not hired due to her head scarf conflicting with a store policy regarding clothing of employees. The hiring agent for the clothing retailer, however, did not have notice that the applicant, a Muslim, wore a head scarf based on her religious beliefs. The Court held, therefore, that the retailer had no duty to accommodate the applicant’s religion. While the agent had seen the applicant wearing her scarf, he did not know her religion. Even though the agent assumed the applicant was a Muslim, the agent did not ask the applicant during the interview and the applicant did not tell the hiring agent the reason she wore a scarf.

AN EMPLOYER MAY BE LIABLE FOR SAME-SEX SEX HARASSMENT

In EEOC v. Boh Bros. Const. Co., L.L.C., 2013 WL 54200320 (5th Cir. 2013), the Court found the evidence was sufficient to support the EEOC’s asserted sex stereotyping theory of same-sex harassment under Title VII against the employer. The male iron worker employee alleged he was unlawfully harassed by his supervisor because he was not stereotypically masculine. The evidence was that the supervisor thought that the worker was not a manly-enough man, taunted him tirelessly through the use of sex-based epithets directed at the worker’s masculinity, and repeatedly mocked him with sexualized acts, including simulated anal sex. In addition, the
worker testified he was a unique and constant target of the supervisor’s almost daily sex-based abuse. This established that the harassment was severe and pervasive.

**BELIGERENT AND AGGRESSIVE BEHAVIOR DEFEATS CLAIM FOR RETALIATION**

In Wright v. St. Vincent Health System, 2013 WL 5225214 (8th Cir. 2013), an African-American hospital employee failed to prove that retaliation was a motivating factor behind her termination, despite “incredibly suspicious” timing. The employer terminated the employee within 45 minutes of the time the employee, a surgical technologist, called the employer’s HR Department to complain of race discrimination. The Court found that while this might be strong circumstantial evidence, even stronger was the evidence that the Director of Surgical Services decided to terminate the employee before her race discrimination complaint. The reason for the termination was the employee’s “belligerent” and “insubordinate” action during a telephone conversation and “inappropriate” and “aggressive” behavior by the employee against the Director of Surgical Services.

**IN ILLINOIS TWO YEARS OF CONTINUOUS EMPLOYMENT IS NECESSARY TO ENFORCE A POST EMPLOYMENT RESTRICTIVE COVENANT**

In Fifield and Enterprise Finance Group, Inc. v. Premier Dealer Services, Inc., 2013 ILApp(1st) 120327, the Illinois Appellate Court, 1st District, held that Illinois companies may require newly hired employees to sign noncompetition agreements. However, if the employee is employed for less than two years, their restrictive covenant will lack the consideration necessary to be enforceable by an employer. There must be two years of continuous employment to be adequate consideration to support a post employment restrictive covenant.

**DUTY TO ACCOMMODATE MAY NOT BE LIMITED TO THE ESSENTIAL JOB FUNCTIONS**

In Feist v. Louisiana, Dept. of Justice, Office of the Atty. Gen., 2013 WL 5178846 (5th Cir. 2013), the employee requested as an accommodation a reserved on-site parking space. The employee did not request a modification to her essential job functions. The Court held an employer could be required to provide an accommodation which was not restricted to performance of the essential job functions. Thus, the employee could go forward with her ADA failure-to-accommodate claim against her employer.

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