

Employment Updates

Supreme Court Reviewing Important Employment Case from Tenth Circuit Court

The Supreme Court took oral argument in *Sprint/United Management Co. v. Mendelsohn*, No. 06-1221. [National Law Journal Monday January 21, 2007, page 12.]

Michael Starr and Christine M. Wilson called the case “likely the most important employment law case the court will decide this term.”

The issue in the case is admissibility of employee testimony in a discrimination case based on the actions of a company during a Reduction in Force (RIF). The evidence and claims in the case before the Tenth Circuit did not include a disparate impact claim. The Plaintiff alleged that testimony from other departments’ employees regarding the layoffs was relevant (and admissible) to support the plaintiffs’ layoff claims from a separate department.

The Plaintiffs in this case made claims based on the ADEA (Age Discrimination in Employment); however, the finding could have applicability to other types of discrimination evidence in federal courts under Rule 401. The Tenth Circuit overruled the federal district court’s decision against the employee in the evidence matter. *Sprint/United Management Co. v. Mendelsohn*, 466 F.3d 1223, 1228-30 (10th Cir. 2006).

In the Supreme Court hearing, employer attorneys argued for a narrower definition of relevant evidence, one that would exclude management decisions or employee experiences in different departments. The plaintiffs’ counsel argued for a broader conclusion on the question of “whether a reasonable person might believe the probability of the truth of the consequential fact to be different if that person knew of the proffered evidence.” If allowed, this kind of evidence would continue to be

used to support management “pattern and practice” lawsuits, without showing statistical probabilities or written management directives.

The case demonstrates that, however problematic the disparate impact statistical cases may be, there may be equally burdensome work to address the issues concerning what sort of evidence a “reasonable person” will consider in deciding if a layoff decision is based on age discrimination.

Minimum Wage Change

Colorado increased its minimum wage to \$6.85 per hour on January 1, 2007. Tipped employees wage increases to \$3.83 per hour. Wages will be increased to \$7.02 per hour next January 1, 2008; tipped to \$4.00. In 2009 it will be adjusted annually.

New I-A Forms To Be Used

Also, the acceptable I-9 forms to prove ability to work in Colorado and the US were amended in 2007 and no version of the forms will be accepted earlier than the one posted on the Colorado Department of Labor website at <http://www.uscis.gov/files/form/I-9>. That form may change again in June of 2008.

Five documents have been removed from List A of the list of acceptable documents: these all relate to acceptable forms of evidence for non-citizens. One form, the unexpired Employment Authorization document I-766 had been added. Please see the specific instructions at the website listed for more details. For employees who provided documents in 2007 and forward, the newer forms should be used.

For more information, contact CTSI at 303-861-0507.