CTSI
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Technical Update

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Two Federal Courts Register Significant Losses for Employers

Sex Harassment Hostile Environment

The U.S. Court of Appeals for the11th Circuit issued a unanimous decision overturning the trial court in a sex harassment case Reeves v. C.H. Robinson, the trial court originally ruled that the behavior was demeaning to women in general but not to Reeves specifically.

The Appeals Court ruled otherwise. They decided that the evidence supported her claim. They found that a three year period of continuous daily harassment, including sex-specific profanity, lewd comments, obscene gestures, pornographic photos of women and a radio show disparaging to women created a hostile work environment in violation of Title VII. In the case, Reeves repeatedly told her co-workers and her supervisor that they were making her uncomfortable. She eventually quit and sued for constructive discharge. The Appeals Court ruled that the harasser need not specifically direct or refer the disparaging comments and conduct to an individual for that individual to have a claim for "hostile environment" constructive discharge. The nature and extent of the evidence of a hostile environment in the workplace was sufficient to conclude that a reasonable person would have been offended. Since the plaintiff communicated that to the employer, and the employer did not take sufficient steps to deter the damage to the plaintiff, liability was found for the constructive discharge. A similar issue is pending before the Fourth Circuit U.S. Court of Appeals in Maryland.

Age Discrimination Claim Based on Lay Offs Corresponding to Age

In another case, a Pennsylvania company laid off 29 employees during a reduction in force in 2005. Each of the 29 was the oldest in the group with similar positions. All were over the age of 55. The jury found that the company had "willfully" discriminated against the plaintiffs, which entitled them to double back-pay damages under the Age Discrimination in Employment Act.

Under current Supreme Court decisions, age may not be the "but-for" cause of an employment action. Therefore, if employers have only age-related reasons for selecting one or more employees under an reduction in force, the layoff plans should be reviewed and revised. This case was Marcus et al v. PQ. Corporation (E.D. Penna. 07-2075), decided on November 10, 2009.

What This Means For Counties

Although these cases are not in the Tenth Circuit, they can be expected to appear as support for arguments in similar disputes, unless or until the Supreme Court rules otherwise. Since most discrimination cases rely more heavily on the specific facts in the court record, rather than the rule of law being applied, it is unlikely that these types of holdings will be changed by Supreme Court rulings in the near future. Even though Colorado county officials have some protection for mere negligence, the fact that the court ruled this conduct was "willful" suggests that some degree of care must be exercised when investigation and evaluating employment actions that might be construed on the basis of age, gender or similar protected categories.

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