

FBA Labor & Employment Law Section

Monthly 5th Circuit Updates

September 2011

Bellard v. JPS Health Network (age discrimination claim): Issue—court faces claims of age discrimination supported by both direct and circumstantial evidence; Holding—comments made remote in time, not made to the plaintiff, and not made in the context of an employment decision do not constitute direct evidence; further, the plaintiff was not nearly identical to the individuals chosen for the transfer positions in that those individuals, unlike the plaintiff, actually applied for the transfer positions; URL—<http://www.ca5.uscourts.gov/opinions/unpub/11/11-10254.0.wpd.pdf>

Frensley v. N. Miss. Med. Ctr., Inc. (quid pro quo sexual harassment suit): Issue—whether the plaintiff established a causal nexus between the rejection of her supervisor’s advances and the tangible employment actions; Holding—the only evidence of causation is the temporal proximity of five weeks; against this, the defendant raised persistent problems that resulted in stress to the plaintiff leading her to resign once and express to her superiors that she was at the crossroads of resigning; the harasser’s superior had also expressed his desire for new leadership; URL—<http://www.ca5.uscourts.gov/opinions/unpub/10/10-60817.0.wpd.pdf>

Dediol v. Best Chevrolet, Inc. (hostile work environment and constructive discharge): Issue—whether a plaintiff can allege a hostile work environment claim based on age discrimination under the ADEA, other issues include religious discrimination and constructive discharge; Holding—adopting the 6th Cir.’s reasoning, the Court enunciated four factors (1-the plaintiff is over the age of 40, 2-the plaintiff was subjected to harassment based on age, 3-the nature of the harassment created an objectively hostile environment, 4-there is some basis for liability on the part of the employer); plaintiff’s supervisor made several insulting remarks relating to the plaintiff’s age; whether the environment was objectively hostile depends on a totality of the circumstances and whether the comments were severe or pervasive; the constructive discharge claim should survive as the employment situation became increasingly volatile and the plaintiff was not permitted to transfer to another department; URL—<http://www.ca5.uscourts.gov/opinions/pub/10/10-30767-CV0.wpd.pdf>

Roussell v. Brinker Int’l, Inc. (collective action brought by servers at Chili’s for FLSA): Issue—whether the 55 plaintiffs should have been decertified as a class and whether alleged tip ineligible employees were entitled to share in a mandatory tip pool; Holding as to the class—the court has never set a legal standard for collective-action certification, the district court applied the similarly situated test (as opposed to the one akin to Rule 23 class actions) and found evidence indicating a pattern as to the 55 plaintiffs and the alleged tip ineligible employees, distinctions among employees must make a difference relevant to the legal issues presented, the jury hearing evidence on 25 of 55 plaintiffs was sufficient; Holding as to the tip eligibility—the

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tip ineligible employees were paid full minimum wage, there was a clear dividing line between the jobs; URL— <http://www.ca5.uscourts.gov/opinions/unpub/09/09-20561.0.wpd.pdf>

Dulin v. Bd. of Com'rs of the Greenwood LeFlore Hospital (on petition for rehearing): the court withdrew its earlier opinion and reversed summary judgment citing *Reeves* that a plaintiff's prima facie case combined with sufficient evidence that the employer's asserted justification is false is enough to survive judgment as a matter of law; URL— <http://www.ca5.uscourts.gov/opinions/pub/10/10-60095-CV1.wpd.pdf>

PACE v. Exxon Mobile Corp. (two labor grievances pursuant to the collective bargaining agreement): Issue—whether the grievances are arbitrable; Holding—arbitrable grievances are good faith claims that the other party has violated the agreement; the element of good faith isn't entirely subjective, the plausibility of a claim that a written provision has not been honored is indicative of whether that claim can be in good faith; the claims brought by the union both related to specific provisions in the agreement that authorized Exxon's actions; URL— <http://www.ca5.uscourts.gov/opinions/pub/07/07-30559-CV0.wpd.pdf>

Phillips v. Leggett & Platt, Inc. (age discrimination claim out of Mississippi): Issue—whether the time should be calculated from the plaintiff's termination or whether the intervening temporary job with the defendant equitably tolled the 180-day limitation; Holding—the limitations period begins on the date of notice of termination rather than the final date employed; an employment event that is merely an effect of a prior employment decision does not constitute a separate and distinct act that begins the calendar anew; the hope of the temporary job evolving into a permanent position following the plaintiff's termination was not enough to delay the start of the ADEA limitations period; URL— <http://www.ca5.uscourts.gov/opinions/pub/10/10-60585-CV0.wpd.pdf>

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