WorkSmarts Half-Day Seminar

Case Law Update:

Developments from the Courts and Practical Takeaways

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Overview

Summary

- Supreme Court of the United States Cases
- Federal Appellate Court Cases
- Federal District Court Cases
- State Court Cases

Supreme Court of the United States

Mahanoy Area School Dist. v. B.L. through Levy

- **Facts**
  - BL is a student at the Mahanoy Area High School ("MAHS")
  - BL tried out for but failed to make the varsity cheerleading squad. However, she earned a spot on the junior varsity cheerleading squad.
  - Off-campus and outside of school hours, BL made a post to her Snapchat account that contained a middle-finger emoji and a caption that read as follows: "*F--- school, f--- softball, f--- cheer, f--- everything.*"
  - Other students and MAHS administrators eventually learned of BL's post.
  - MAHS took the position that BL's Snapchat post violated team and school rules and punished BL by suspending her from the JV cheerleading squad for the remainder of the school year.

Mahanoy Area School Dist. v. B.L. through Levy

- **Issue: Did the school district violate BL's First Amendment free speech rights by punishing her for off-campus speech?**
- **Holding: Yes.**
  - School districts have a special interest in regulating on-campus speech that "materially disrupts classwork or involves substantial disorder or invasion of rights of others." But that special interest weakens considerably when applied to off-campus speech.
  - Given the facts of the case, MAHS could not constitutionally justify its attempt to regulate BL's off-campus speech.

Federal Appellate Courts

Vines *et al.* v. Welspun Pipes, Inc. (8th Cir.)

- **Facts**
  - Anthony Vines filed a collective action lawsuit against Welspun Pipes, Inc., and other related companies ("Welspun") under the FLSA and the Arkansas Minimum Wage Act ("AMWA")
  - Vines' counsel reached a pre-certification settlement agreement with Welspun and submitted it to the court for approval.
  - However, the court rejected the proposed joint settlement agreement multiple times:
    - **First Rejection:** Court held that the parties did not provide enough information for it to be able to determine the overall reasonableness of the proposed agreement
    - **Second Rejection:** Court held that the parties improperly negotiated substantive relief and reasonable attorneys' fees at the same time
    - **Third Rejection:** Court granted plaintiffs' counsel's renewed motion for reasonable attorneys' fees but only awarded $1.00 because of questionable billing practices. The court did not even attempt to do a Lodestar calculation.

Vines *et al.* v. Welspun Pipes, Inc. (8th Cir.)

- **Issue: Did the district court abuse its discretion in denying the second proposed settlement and by only awarding $1.00 in attorneys' fees on the subsequent request for reasonable attorneys' fees?**
- **Holding:**
  - No, the district court did not abuse its discretion by denying the second proposed settlement agreement. There was sufficient evidence in the record showing that substantive relief and fees were negotiated at the same time. This practice is improper.
  - Yes, the district court abused its discretion by only awarding $1.00 in fees without even attempting to do a Lodestar calculation. But there is a strong dissenting opinion that argues the district court was properly attempting to curb abusive litigation practices.

Federal District Courts

Arnold *et al.* v. LME, Inc. *et al*. (D. Minn.)

- **Facts:**
  - LME is a trucking company based out of Minnesota
  - On July 11, 2019, LME announced it was shutting down all its terminals the following day and that everyone's employment would be terminated
  - Arnold and others ("Plaintiffs") sued LME and its individual owners (the "Wiselys") under the WARN Act
  - In their Complaint, Plaintiffs alleged the Wiselys were alter egos of LME:
    - Alleged that the Wisleys ignored corporate legal formalities, commingled individual and corporate assets, and used LME as a façade for individual dealings
    - Alleged that a different trucking company owned by the Wisleys had also closed without warning and then "sold" its assets to a new company that was controlled by them
  - LME moved to dismiss the Wisleys from the lawsuit

Arnold *et al.* v. LME, Inc. *et al*. (D. Minn.)

- **Issue: Did Plaintiffs successfully state a claim under the WARN Act against the individual owners of LME?**
- **Holding: Yes.**
  - The allegations in Plaintiffs' Complaint, if proven, would successfully support an "indirect WARN Act claim" against the Wisleys under an alter ego theory of liability.

Carmon v. Saks Fifth Ave. (E.D. Mo.)

- **Facts (1 of 2):**
  - Carmon was employed by Saks Fifth Avenue as an Asset Protection Investigator
  - Carmon applied twice but was not selected for a promotion to a District Asset Protection Manager position within the Saks
  - After being passed over for the promotion, Carmon authored an anonymous letter complaining of racism at her store.
  - Saks investigated the accusations in the letter and concluded that there was merit to many of the complaints in the letter.
  - Saks took steps to make changes at the store including, but not limited to, terminating the employment of certain employees.

Carmon v. Saks Fifth Ave. (E.D. Mo.)

- **Facts (2 of 2):**
  - After the investigation, Carmon was counseled multiple times (via written warnings and performance evaluations) regarding the need to follow proper store closing procedures
  - On April 17, 2018, Carmon sent a formal letter to Saks' HR department complaining of racial discrimination by her manager
  - In June of 2018, Carmon was involved in the improper removal of returned merchandise from the store in violation of Saks' customer-owned merchandise ("COM") policy
  - The matter was investigated and Saks decided to terminate Carmon's employment
  - Carmon sued Saks under the MHRA alleging unlawful race discrimination and retaliation

Carmon v. Saks Fifth Ave. (E.D. Mo.)

- **Issue: Did the written warnings and negative performance evaluations constitute adverse employment actions?**
- **Holding: Not necessarily.**
  - "It is not clear to the Court that the March 2018 final written warning or negative performance evaluation were adverse employment actions. These actions are not alleged to have affected Carmon's pay or duties, and they did not result in her termination, which was caused by her alleged theft and violation of policy."

Carmon v. Saks Fifth Ave. (E.D. Mo.)

- **Issue: Were the written warnings or negative performance reviews racially motivated?**
- **Holding: No.**
  - "No reasonable fact finder could conclude that the warning or performance evaluation was racially motivated, or applying McDonnell Douglas burden-shifting, that the stated performance issues were pretext for race discrimination. . . . Carmon's complaint that she was not adequately informed of these performance issues earlier and her disagreement with the basis for some of the issues may be reason to question the Fronteac store's business practices, but they do not evidence a discriminatory animus based on race."

Carmon v. Saks Fifth Ave. (E.D. Mo.)

- **Issue: Was there a causal connection between Carmon's anonymous letter and the termination of her employment?**
- **Holding: No.**
  - "An entire year separated Carmon's July 2017 anonymous letter and her eventual firing. That gap in time is too long to support causation for a retaliation claim without additional evidence."

Carmon v. Saks Fifth Ave. (E.D. Mo.)

- **Issue: Was there a causal connection between Carmon's formal letter complaining of discrimination and the termination of her employment?**
- **Holding: No.**
  - "The three-month gap between Carmon's April 2018 complaint to human resources and her July 2018 termination is shorter but still too long to demonstrate a causal relationship. In any event, 'more than a temporal connection between an employee's protected conduct and the adverse employment action is required to create a genuine factual issue on causation."
  - Furthermore, "it was only after Carmon took merchandise from the store without permission that Saks decided to terminate her."

Schankin v. Commercial Steel (E.D. Mi.)

- **Facts (1 of 2):**
  - Schankin was employed by Commercial Steel as a Human Resources Director
  - Commercial Steel only had one in-house attorney (Myles)
  - Myles was not typically involved in termination decisions or other employment law issues (e.g. OSHA violations)
  - Schankin had informal general discussions with Myles regarding concerns about perceived age discrimination during several termination decisions
  - Schankin alleged that, during these conversations, Myles acknowledged that the company may be engaging in age discrimination
  - Schankin also raised his age discrimination concerns with other executives at Commercial Steel

Schankin v. Commercial Steel (E.D. Mi.)

- **Facts (2 of 2):**
  - Commercial Steel reorganized the HR department and terminated Schankin's employment
  - Schankin sued Commercial Steel under the ADEA and the Eliott-Larsen Civil Rights Act (i.e. the state of Michigan's anti-discrimination law)
  - Schankin's counsel deposed Myles and sought to question him about the conversations relating to age discrimination
  - Commercial Steel's counsel raised an attorney-client privilege objection and instructed Myles not to answer
  - Schankin's counsel filed a motion to compel Myles' testimony regarding the conversations between him and Schankin

Schankin v. Commercial Steel (E.D. Mi.)

- **Issue: Were Schankin's conversations with Myles about perceived age discrimination protected by the attorney-client privilege?**
- **Holding: On the then available factual record, no.**
  - Myles' alleged statements did not arise at the prompting of the company or as part of an internal investigation and, most importantly, the record shows that Myles rarely, if ever, provided legal advice to the company on employment law issues.
  - The conversations were informal and general. They were not a part of formal meetings about the terminations.

Johnson v. McDonald Corp. (E.D. Mo.)

- **Facts:**
  - Johnson worked at a McDonald's franchise located in St. Louis, Missouri
  - Johnson only worked at the franchise location for a few weeks
  - During that time, she claims she was subjected to severe sexual harassment and was constructively discharged
  - Johnson sued the franchisee as well as McDonald's corporate under Title VII
  - In her complaint, Johnson alleged that McDonald's corporate was a joint employer
  - McDonald's corporate moved to dismiss the claims against it arguing that it is not Johnson's "employer" for Title VII purposes

Johnson v. McDonald Corp. (E.D. Mo.)

- **Issue: Did Johnson successfully state a claim against McDonald's corporate under Title VII?**
- **Holding: Yes.**
  - The district court found that, in combination, the following allegations were enough to satisfy the Rule 8 pleading standard on Johnson's joint employer theory of liability:
    - Johnson alleged that she applied for her job on a generic McDonald's application that was supplied to franchisee by McDonald's corporate
    - Johnson alleged that her manager was trained at Hamburger University
    - Johnson alleged that McDonald's corporate provided guidance to the franchisee with respect to training on sexual harassment prevention and reporting
    - Johnson alleged that McDonald's corporate conducted inspections and identified employees who were not performing up to company standards

Lehr v. Nike IHM, Inc. (E.D. Mo.)

- **Facts (1 of 4):**
  - Lehr was employed at a Nike manufacturing facility as a Machine Operator
  - Nike permitted employees at the facility to play music while working
  - Nike maintained an Electronic Device Policy which stated that the type of music employees listen to must not be offensive to anyone
  - In September 2017, Lehr complained to her manager that the music other employees were playing was too loud and that the music contained curse words such as “the N word,” “the F word,” and “the MF word.”
  - Lehr alleged that on other unspecified dates she complained to her manager that the rap music being played by co-workers was racially hostile

Lehr v. Nike IHM, Inc. (E.D. Mo.)

- **Facts (2 of 4):**
  - Lehr's managers responded to her complaint by holding an all-hands meeting for the employees on her shift and reminding them that they should only be playing censored music from the radio
  - On November 26, 2017, Lehr was involved in a physical altercation with a co-worker over rap music being played on that co-worker's personal radio
  - Nike investigated the incident and offered Lehr an immediate opening on the evening shift
  - Lehr initially declined the offer for a transfer to the evening shift because of the purported "demographics" of the evening shift employees
  - Lehr further claimed that she was paranoid about the proposed transfer because she would be a minority on the evening shift and that most people on that shift are "blacks from the same place"

Lehr v. Nike IHM, Inc. (E.D. Mo.)

- **Facts (3 of 4):**
  - Despite her comments, Lehr ultimately accepted a transfer to the evening shift
  - On January 26, 2018, Lehr sent an e-mail to the Employee Relations department that, among other things, stated she did not feel safe at work because Nike had "felons and gang members working inside"
  - Nike began investigating the complaints raised in the January 26th e-mail
  - On February 1, 2018, Lehr reported a prior conversation that she had with a temporary employee working at the facility about politics. Specifically, Lehr claimed that she disclosed the fact that she voted for Donald Trump and that the co-worker allegedly responded by saying that she must be racist for voting in that manner.

Lehr v. Nike IHM, Inc. (E.D. Mo.)

- **Facts (4 of 4):**
  - During the February 1st conversation, the HR manager attempted to ask Lehr about the complaints in her January 26th e-mail but she refused to discuss them.
  - Lehr left the manufacturing facility on February 1, 2018, before her shift was over and never returned to work.
  - Lehr officially resigned from her employment via e-mail on August 13, 2018.
  - Lehr subsequently filed suit against Nike asserting, among other things, a race discrimination claim and a hostile work environment claim

Lehr v. Nike IHM, Inc. (E.D. Mo.)

- **Issue: Did the playing of uncensored rap music create a racially hostile work environment?**
- **Holding: No.**
  - There was no evidence that the uncensored rap music was directed at Lehr or played because of her race:
    - Even though some portion of the music contained lyrics negatively related to white people, Lehr admitted in her deposition that the music was not played in response to her being in the workplace
    - Furthermore, Lehr admitted that some of her white co-workers enjoyed the music being played and that everyone, including white people, seemed to like rap music

Lehr v. Nike IHM, Inc. (E.D. Mo.)

- **Issue: Did the temporary co-worker's comment about Lehr being racist because of who she voted for constitute unlawful racial harassment under Title VII?**
- **Holding: No.**
  - "Plaintiff's evidence also does not establish that the conduct of the temporary coworker who called Plaintiff a racist because she voted for President Trump relates to Plaintiff's race or was based on animus to her race. Plaintiff alleges that he called her a racist because of who she voted for, not because she is white. This is a substantive distinction."

EEOC v. Jackson National Life Ins. Co. (D. Colo.)

- **Facts (1 of 2):**
  - Ford was employed by Jackson National Life Insurance ("Jackson") as a Business Development Consultant ("BDC")
  - During her employment, Bossert (one of Ford's managers) referred to Ford and other black female employees as "Black b------" and/or "Black Panthers"
  - Bossert was not involved in promotional decisions
  - Ford applied for a promotion to become an External Wholesaler at Jackson but was not selected

EEOC v. Jackson National Life Ins. Co. (D. Colo.)

- **Facts (2 of 2):**
  - Ford obtained a job as an External Wholesaler at a different company and resigned from her employment at Jackson
  - Ford subsequently sued Jackson for unlawful sex and race discrimination under Title VII

EEOC v. Jackson National Life Ins. Co. (D. Colo.)

- **Issue: Did Bossert's derogatory comments about black women constitute direct evidence of discrimination?**
- **Holding: No.**
  - "Sexist comments by those who were not decision-makers are irrelevant to the analysis."
  - The undisputed facts showed that the individuals who were actually responsible for making the promotional decision did not make derogatory comments about Ford or any other black female employees.

Buhrman v. Aureus Med. Group (D. Colo.)

- **Facts (1 of 3):**
  - Buhrman applied for an open registered nurse position at Aureus Medical Group (“Aureus”)
  - Aureus made a conditional job offer to Buhrman that was subject to him answering a Confidential Medical History Questionnaire and Personal Information form
  - Aureus maintained a Code of Ethics which stated that falsification of documents could result in the termination of his employment
  - The questionnaire asked a series of questions including, whether Buhrman had any blood-borne contagious diseases?
  - Buhrman answered no. But the truth was that he had previously been diagnosed with HIV.

Buhrman v. Aureus Med. Group (D. Colo.)

- **Facts (2 of 3):**
  - Buhrman was hired and began working at Aureus.
  - Buhrman suffered an on the job injury while working at Aureus.
  - Treatment of the injury led to the production of medical records which revealed the fact that he had been diagnosed with HIV.
  - Initially, it was unclear when Buhrman first learned of his diagnosis and Aureus did not take any disciplinary action.
  - However, Aureus did ask Buhrman to complete a new questionnaire and work with it to determine whether he could safely perform his job duties.
  - During the process of learning more about his diagnosis and his ability to safely perform his job duties, Aureus learned that Buhrman knowingly lied when he responded to the original questionnaire.

Buhrman v. Aureus Med. Group (D. Colo.)

- **Facts (3 of 3):**
  - Aureus took the position that Buhrman had falsified documents in violation of the Code of Ethics and terminated his employment.
  - Aureus had previously terminated other employees for falsifying time cards, certifications, immunization records, work experience, educational credentials, and job references
  - Aureus employed both a registered nurse and a sterile processor who were HIV-positive but had disclosed that fact as part of their application
  - Buhrman sued Auerus under the ADA alleging that (1) it discriminated against him due to his HIV-status and (2) it made an unlawful inquiry into his disability.

Buhrman v. Aureus Med. Group (D. Colo.)

- **Issue: Was Aureus's proffered reason for terminating Buhrman's employment a pretext for unlawful disability discrimination?**
- **Holding: Unclear, genuine issue of material fact.**
  - "Plaintiff's untruthful answers to the bloodborne contagious disease question are not to be taken lightly. However, arguably they tend to reflect more a desire to protect one's privacy and guard against humiliation and prejudice (even if misguided and unlawful) than a resolve to deceive. Plaintiff is not similarly situated to other terminated employees who falsified documents to the extent defendant claims. This dissimilarity weakens Aureus's proffered reasoning and is also evidence of potential pretext."

Buhrman v. Aureus Med. Group (D. Colo.)

- **Issue: Did Aureus make unlawful inquiries into Buhrman's disability status?**
- **Holding: No.**
  - Aureus's inquiries were permissible post-offer pre-employment inquiries under 42 U.S.C. § 12112(d)(3):
    - Aureus's job offer form that contained the initial bloodborne pathogen question was given to all applicants. Therefore, it clearly falls within the exception.
    - The full questionnaire was not given to all applicants. But follow-up inquiries are permissible under the ADA. Aureus's inquiries were necessary because a nurse might be expected to engage in procedures that could place him/her or the patient at risk due to HIV-status. Aureus acted lawfully when it tried to determine whether Buhrman could safely perform such procedures.

Billard v. Charlotte Catholic High School et al. (W.D.N.C.)

- **Facts (1 of 2):**
  - Billard is an openly gay man
  - He was employed by Charlotte Catholic High School (“CCHS”) as a drama teacher
  - In October 2014, Billard publicly announced his engagement to be married to another man on Facebook
  - CCHS eventually learned of the announcement because Billard was Facebook friends with co-workers
  - CCHS ultimately refused to renew Billard’s contract as a drama teacher for the following school year. CCHS expressly stated that the reason for the non-renewal was Billard’s decision to marry another man

Billard v. Charlotte Catholic High School et al. (W.D.N.C.)

- **Facts (2 of 2):**
  - Billard sued CCHS for unlawful sex discrimination under Title VII
  - CCHS took the position that its refusal to renew Billard's contract was protected from judicial scrutiny by the First Amendment's Establishment Clause
  - Alternatively, CCHS argued that its decision was protected from scrutiny by the Religious Freedom Restoration Act ("RFRA")

Billard v. Charlotte Catholic High School et al. (W.D.N.C.)

- **Issue: Was CCHS's decision protected from judicial scrutiny by the First Amendment's Establishment Clause?**
- **Holding: No.**
  - "Churches are not – and should not be – above the law. Like any other person or organization . . . [t]heir employment decisions may be subject to Title VII scrutiny, where the decision does not involve the church's spiritual functions."
  - Here, it was undisputed that Billard taught a secular subject and was not involved in any way with the school's religious functions. Therefore, CCHS's decision could not be shielded from Title VII scrutiny.

Billard v. Charlotte Catholic High School et al. (W.D.N.C.)

- **Issue: Was CCHS's decision protected from scrutiny by the RFRA?**
- **Holding: No.**
  - The relevant authorities overwhelmingly hold that the RFRA does not apply to lawsuits between private parties.
  - Therefore, CCHS's argument is inapposite and must be rejected.

Smith v. WM Corp. Servs. (D. Ariz.)

- **Facts (1 of 3):**
  - Smith was employed by WM Corporation Services (“WM”) as an Inside Sales Manager
  - In September 2014, Smith was diagnosed with obstructive sleep apnea
  - Smith’s work hours were usually from 4:30 AM – 1:00 PM
  - Over time, WM changed Smith’s work hours to from 7:00 AM – 3:30 PM
  - On May 20, 2015, Smith submitted a request for reasonable accommodation to return to his earlier work hours
  - WM approved the schedule change request but told Smith he would have to switch from the eBusiness Team to the SnapShot Team

Smith v. WM Corp. Servs. (D. Ariz.)

- **Facts (2 of 3):**
  - Smith was regularly involved in hostile interactions with his co-workers
  - The hostile interactions culminated with a road rage incident that occurred on September 29, 2015:
    - Smith was purportedly cut off by a co-worker on the freeway
    - He responded by following the co-worker into the employee parking lot, blocking her car into her spot with his car, and then following her into a building where he did not work
    - Smith admitted to following the co-worker into her building but denied that he blocked her into her parking space
  - WM investigated the road rage incident and decided to terminate Smith's employment
  - Smith filed a lawsuit against WM for disability discrimination and retaliation

Smith v. WM Corp. Servs. (D. Ariz.)

- **Facts (3 of 3):**
  - WM moved for summary judgment on Smith's disability discrimination claim arguing, in part, that Smith was not a "qualified individual" because he was unable to perform an essential function of his job.
  - Specifically, WM argued that Smith was unable to communicate, build relationships, and act professionally.

Smith v. WM Corp. Servs. (D. Ariz.)

- **Issue: Was Smith a "qualified individual" under the ADA?**
- **Holding: No.**
  - "[Smith's] attempts to cast doubt about what occurred during the 'road rage incident' do not survive summary judgment. Whether [Smith] cut off Debbi James or the other way around, it is undisputed that he followed her through the parking lot and into her building, where he did not work. . . . The Court finds [WM's] evidence is sufficient to support its allegations that [Smith] was unqualified for his position and did not meet the company's standards set forth in the job description. . . . Because the Court finds there is no question of material fact as to whether Plaintiff was qualified for the position, the claim for disability discrimination cannot survive."

Hartsuch v. Acension Med. Group (W.D. Wis.)

- **Facts(1 of 2):**
  - Hartsuch was employed by Acension Medical Group (“Acension”) as a contract physician in the Howard Young Medical Center’s (“HYMC”) emergency department
  - On March 18, 2020, Acension issued workplace COVID-19 protocols that were based on the then available CDC guidance
  - On March 20, 2020, Hartsuch raised concerns about Acension’s masking and discharge policies with Heong P’ng, the Medical Director of Emergency Services
  - On March 23, 2020, Hartsuch sent an e-mail to Jennie Larson, the Supervisor of Physician-Based Services, criticizing the hospital’s COVID-19 protocols and asking to speak further about requested improvements

Hartsuch v. Acension Med. Group (W.D. Wis.)

- **Facts (2 of 2):**
  - On March 24, 2020, Hartsuch sent a follow-up e-mail claiming that the protocols were not consistent with CDC guidance. Additionally, Hartsuch stated that he would not continue working at HYMC unless changes were made.
  - Acension believed its COVID-19 protocols were consistent with CDC guidance and that no changes were needed.
  - Furthermore, Ascension believed Hartsuch would stop showing up for work if his demands were not met.
  - Therefore, Acension removed Hartsuch from the schedule and found other contract employees to cover his shifts.
  - Hartsuch sued Acension for the common law tort of wrongful discharge in violation of public policy

Hartsuch v. Acension Med. Group (W.D. Wis.)

- **Issue: Did Acension wrongfully discharge Hartsuch in violation of public policy when it refused to continue scheduling him?**
- **Holding (1 of 2): No.**
  - Under Wisconsin law, a discharge is wrongful under the public-policy exception if it occurs because the employee either (1) refused to violate public policy or (2) fulfilled an affirmative obligation imposed by law.
  - Hartsuch was not attempting to fulfill ***his*** obligations under a ***specific legal mandate*** and he did not face any legal consequences by failing to lodge his complaints about the protocols.

Hartsuch v. Acension Med. Group (W.D. Wis.)

- **Holding (2 of 2): No.**
  - Advancing an important public policy (such as preventing the spread of COVID-19) is laudable, but it cannot, in and of itself, be the basis of a wrongful discharge claim.
  - Even if Hartsuch's discharge violated a fundamental and well-defined public policy, the undisputed facts showed that Ascension terminated his employment because he threatened to stop showing up for work; not because he complained about the COVID-19 protocols.
  - "When deciding whether a discharge violates public policy, the court must consider whether the employee's conduct 'jeopardized significant lawful interests of either the employer or of the public,' which may include concerns about staffing shortages."

State Cases

Hagen v. Steven Scott Mgmt. (Minnesota S. Ct.)

- **Facts:**
  - Jessica Hagen was employed by Steven Scott Management (“SSM”) as a part-time on-site property manager.
  - SSM compensated Ms. Hagen, in part, in the form of “rent credits”
  - As a part of her job duties, Ms. Hagen was required to be on-call. But she was only paid for the time she was actively responding to a tenant call.
  - After working there for several years, Ms. Hagen sued SSM alleging:
    - Failure to pay minimum wages under the Minnesota Fair Labor Standards Act (“MFLSA”)
    - Improper wage deductions
    - Failure to pay for all time worked, including on-call time
  - The district court granted SSM’s motion for summary judgment and the court of appeals affirmed

Hagen v. Steven Scott Mgmt. (Minnesota S. Ct.)

- **Issue 1: Do “rent credits” qualify as “wages” under the MFLSA?**
- **Holding: Yes.**
  - If the Minnesota Legislature had not intended for rent credits to be a form of wages under the MLFSA, it would not have directed the Department to make “allowances” as part of the wages of employees receiving lodging from their employer.
  - However, rent credits only qualify as wages under the MLFSA to the extent provided for by the Department in Minnesota Rule 5200.0070 (the “lodging allowance” rule).

Hagen v. Steven Scott Mgmt. (Minnesota S. Ct.)

- **Issue 2: Did SSM violate the MLFSA by not paying Ms. Hagen for *all* on-call time?**
- **Holding: Unclear, fact issue for jury to decide.**
  - For on-site employees who reside on their employer's premises, the term "hours worked" includes time when the on-site employee is performing any duties of employment, but does not mean time when the on-site employee is on the premises and available to perform duties of employment and is not performing duties of employment. *See* Minn. Stat. § 177.23, subd. 10.
  - The statute's language is ambiguous and there were disputed fact issues about what Ms. Hagen was able to do during on-call time. Therefore, issue and claim should have been resolved by jury rather than court.

Aerotek, Inc. v. Boyd *et al*. (Texas S. Ct.)

- **Facts:**
  - Four employees sued Aerotek for unlawful race discrimination and retaliation
  - Aerotek moved to compel arbitration based on an arbitration agreement that was electronically signed during an online-only hiring process
  - The plaintiffs admitted going through the online onboarding workflow but denied that they were presented with the arbitration agreement during that process
  - Aerotek offered unrebutted evidence and testimony demonstrating the security of its software system and the steps taken to verify a candidate's identity
  - After an evidentiary hearing, the trial court denied Aerotek's motion to compel arbitration and a divided court of appeals affirmed the denial

Aerotek, Inc. v. Boyd *et al*. (Texas S. Ct.)

- **Issue: Was the plaintiffs' unsupported denial enough to overcome the company's unrebutted security and reliability evidence of electronic signatures?**
- **Holding: No.**
  - To complete the on-boarding process, a candidate was required to create a unique identifier, a user ID, a password, and a security question. Reasonable people could not differ in concluding that Aerotek employees could not have completed their hiring applications without signing the arbitration agreement.

Clark v. AT&T Mobility Servs. (Mo. App. W.D.)

- **Facts (1 of 2):**
  - Clark (a white woman) was employed at an AT&T retail store as a Sales Associate
  - Clark was supervised by Lynch (a black woman)
  - Clark alleged that, throughout her employment, Lynch made racially hostile comments and treated black employees more favorably than white employees
  - On September 17, 2013, Clark sent a text message to the Area Manager complaining about Lynch's harassment of employees generally
  - On October 8, 2013, Clark sent an e-mail to an Employee Relations Manager complaining of general mistreatment
  - On October 9, 2013, Clark stopped coming into work and made no effort to call-in

Clark v. AT&T Mobility Servs. (Mo. App. W.D.)

- **Facts (2 of 2):**
  - AT&T took the position that Clark abandoned her job and terminated her employment
  - Clark sued AT&T under the MHRA for race discrimination, age discrimination, and retaliation
  - AT&T moved for summary judgment and the circuit court granted the motion on all counts
  - On appeal, Clark argued that the circuit court erred in granting summary judgment on her MHRA retaliation claim

Clark v. AT&T Mobility Servs. (Mo. App. W.D.)

- **Issue: Did the circuit court err in granting summary judgment in favor of AT&T on Clark's MHRA retaliation claim?**
- **Holding: No.**
  - With one exception, Clarks' complaints to management did not contain accusations of race or age discrimination. They were complaints about Lynch's mistreatment of employees generally. Therefore, Clark only engaged in one act of protected activity.
  - Clark voluntarily stopped coming to work ***after*** she had made her complaints and she could not identify any retaliatory acts that occurred between the day she stopped coming to work and the day AT&T terminated her employment for job abandonment. Therefore, there was no causal connection as a matter of law.

WorkSmarts

Top Tips

- Be cognizant of the special rules and ethical obligations that apply to the settlement of wage and hour claims and FLSA collective actions
- Under certain circumstances, business owners and executives can be held personally liable for WARN Act violations
- Promptly investigate and take reasonable steps to resolve employee complaints of unlawful discrimination
- If your company utilizes electronic signatures on employment forms then document what steps the software vendor takes to confirm and verify the identity of the individual who completes the online forms

Thank You

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