Northwest Ohio Human Resource Association

AFFILIATE OF SHRM SOCIETY FOR HUMAN RESOURCE MANAGEMENT

LEGISLATIVE UPDATE

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More Ups and Downs in Employee Wellness: District Court rejects EEOC claims of ADA discrimination

On December 30, 2015, in *EEOC v. Flambeau, Inc.*, Case No. 14-cv-638-bbc, the U.S. District Court for the Western District of Wisconsin granted summary judgment to an employer, rejecting the EEOC's claims that the company's wellness program violated the ADA.

In 2011, Flambeau, Inc., a manufacturer of various plastic products, including Duncan Yo-Yo's, instituted a wellness program that required employees who wished to participate in the employer sponsored health insurance to submit to a health risk assessment and biometric test. At first, the employer provided an incentive to participate in the program, by giving employees a credit toward their health insurance premium. Later, the employer eliminated the credit and made participation in the program conditional to obtaining health insurance through the company.

The complaining employee initially participated in the program when the credit was offered, but refused to participate in later years when the program was mandatory. Subsequently, the EEOC brought a claim alleging that by requiring employees to submit to a biometric screening and health risk assessment before enrolling in health insurance, the wellness program violated the ADA's prohibition against mandatory tests. Conversely, the employer argued the wellness program fell within the ADA's "safe harbor" provisions, as a bona fide insurance benefit.

The EEOC further argued that the wellness program could not be a "term" of the employer's benefit plan, as required by the safe harbor provisions, because it was not listed in the insurance plan's summary description. The court, however, found that it was a term of the employer's benefit plan because the program was sufficiently noticed to the employees, the exams and assessments were scheduled to coincide with open enrollment, and the plan description noted that participants would be required to enroll "in the manner and form prescribed by" the employer.

While the ruling is affirming for employers who utilize wellness programs, employers should not use the ruling as a basis for implementing or expanding wellness programs. As a ruling made from a district court, other district courts asked to rule on the same issue may choose to adopt this court's interpretation, or reject it entirely.

The full version of the opinion may be found here: http://law.justia.com/cases/federal/district-courts/wisconsin/wiwdc/3:2014cv00638/35796/38/

DOL's revised timing of overtime exemption rules

As previously reported, in July 2015, the Department of Labor introduced a proposed rule that would increase the minimum salary threshold for overtime exempt employees from $455 per week/ $23,660 per year; to $970 per week/ $50,440 per year. These changes were previously anticipated to take effect in early 2016.

In a recent announcement, the DOL now expects to publish the final version of the rules in July 2016. Employers will have 60 days following publication to

Court reluctant to extend Title VII to cover sexual orientation

Employees continue attempts to bring claims of discrimination under Title VII based upon sexual orientation, with varying luck. For its part, the EEOC has already found that discrimination on the basis of sexual orientation violates Title VII; however, courts have been reluctant to change their long-standing precedent finding sexual orientation is not covered by Title VII.

In one recent case, the U.S. District Court for the Northern District of Illinois dismissed the plaintiff's claims of discrimination based in part on plaintiff's sexual orientation in *Igasaki v. Illinois Department of Financial and Professional Regulations*, Case No. 15-cv-03693. There, the plaintiff, a 20-year employee and staff attorney for the Medical Prosecutions Unit, alleged that in 2011 a new supervisor was hired who, after finding out Igasaki was a homosexual, discriminated against him by singling him out for lengthy case reviews, selectively enforcing a "no work late" policy, setting impossible deadlines for Igasaki, forcing him to take involuntary leave, and otherwise humiliating him. Igasaki alleged he was terminated in 2015 despite never previously being disciplined. Although the plaintiff characterized his claim in part as "sex discrimination," the court found he was actually seeking a claim for discrimination based upon sexual orientation and found the claim was not covered by Title VII.

In addition to claims of discrimination based upon sexual orientation, Igalaski alleged that he was discriminated based on his age, race, and disability. Those claims were discussed in the ruling.

A full version of the opinion may be found here: http://cases.justia.com/federal/district-courts/illinois/

EEOC proposes new EEO-1 survey

The EEOC has announced revisions to the EEO-1 survey. The commission believes the proposed revisions to the survey will assist in tracking pay inequalities. In addition to requesting the number of employees of each of the already requested groups — sex, race/ethnicity, and job classification — the proposed survey additionally requests:

- W-2 pay data, broken down by sex, race/ethnicity, and job classification, to be reported in 12 pay ranges; and
- Total number of hours worked, also by sex, race/ethnicity, and job classification.

The EEOC is accepting comments on the proposed changes through April 1, 2016.

You can find the proposed survey here: http://www.eeoc.gov/employers/

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