Northwest Ohio Human Resource Association

AFFILIATE OF SHRM SOCIETY FOR HUMAN RESOURCE MANAGEMENT

LEGISLATIVE UPDATE

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Supreme Court decides Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission

On June 4, 2018, the U.S. Supreme Court issued its decision in the *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*. The Court addressed the question of whether religious beliefs must give way to state anti-discrimination laws.

Masterpiece Cakeshop, Ltd. is a Colorado bakery owned and operated by a skilled baker and devout Christian. In July of 2012, a same-sex couple requested the owner design and create a cake for their wedding. The owner declined the request because of his religious opposition to same-sex marriages, which were unrecognized by Colorado at the time. Instead, he offered to sell the couple other types of baked goods.

The couple filed charges with the Colorado Civil Rights Commission alleging sexual orientation discrimination under the Colorado Anti-Discrimination Act. This Colorado state law prevented discrimination based on sexual orientation in a "place of business engaged in any sales to the public and any place offering services…to the public." The bakery owner argued that requiring him to create a cake for a same-sex wedding would violate his right to Free Speech and Free Exercise of Religion, protected by the First Amendment to the U.S. Constitution. The Colorado Civil Rights Commission found in favor of the couple, which a court of appeals affirmed. Thereafter, the bakery owner appealed to the U.S. Supreme Court.

In a 7-2 decision, the Supreme Court held in favor of the bakery owner and reversed the lower court's finding. The Supreme Court found the Colorada Civil Rights Commission exhibited clear and impermissible hostility toward religion and the baker's religious views. The Court wrote: "laws and the Constitution can, and in some instances must protect gay persons and gay couples in the exercise of their civil rights, but religious and philosophical objections to gay marriages are protected views and in some instances protected forms of expression."

Further, the Court opined the Colorado Anti-Discrimination Act must be applied in a neutral manner toward religion. The Court pointed to specific statements made by the Commissioners which disparaged the bakery owner's religious beliefs, as well as specific instances which showed disparate treatment towards him and other Colorado bakers who refused to bake same-sex wedding cakes. The Court concluded the Commission failed to give the bakery owner's claim the neutral and respectful consideration afforded by the Free Exercise Clause of the First Amendment. The *Masterpiece Cakeshop* decision did not, however, directly address the tension between protections for LGBT rights, on the one hand, and the First Amendment's protection of the free exercise of religion on the other.

Important Sixth Circuit Decisions

In *Hostettler v. College of Wooster, No. 17-3406 (6th Cir. 2018)*, the Sixth Circuit concluded that full-time presence in the workplace is not always an essential job function. Employers risk violating the American's with Disability Act (ADA) if they fail to analyze the actual need for full-time work for a specific position.

Hostettler was four-months pregnant when she began as an HR Generalist at The College of Wooster. Following the end of her maternity leave, Hostettler requested additional leave for extreme postpartum depression and separation anxiety, which was granted by the college. Hostettler eventually returned to work on a reduced schedule, which the college allowed for a few months, but, ultimately terminated her months later for failing to return "to [her] assigned position…in a full-time capacity." As a result, Hostettler filed suit alleging violations of the ADA, FMLA, and R.C. 4112.02. The Sixth Circuit held, "Wooster may have preferred that Hostettler be in the office 40 hours a week. And it may have been more efficient and easier on the department if she were. But those are not the concerns of the ADA.…

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U.S. Supreme Court Declares Class Action Arbitration Waivers Enforceable

In a 5-4 decision, the Supreme Court of the United States ruled that arbitration agreements providing for individualized proceedings are enforceable and do not violate either the Federal Arbitration Act ("FAA") or the National Labor Relations Act ("NLRA").

In *Epic v. Systems Corp. v. Lewis, 584 U.S. ____ (2018)*, the Court considered a trio of cases in which employees signed arbitration agreements requiring employment-related claims to be resolved through individual arbitrations and waiver of their ability to pursue class or collective litigation. In each of these cases, the employees sought to litigate wage and hour claims under the Fair Labor Standards Act ("FLSA") and related state laws.

The employees argued the class action waivers were unenforceable under the FAA's savings clause and that these agreements violated Section 7 of the NLRA by restricting an employee's ability to engage in protected concerted activity. The Court rejected the employees' argument and stated, while the policy may be debatable, "the law is clear" that the FAA expressly requires courts to enforce the terms of arbitration agreements as written, including terms that call for individualized proceedings.

The Court explained that while the FAA savings clause allows courts to invalidate arbitration agreements "upon such grounds as exist at law or in equity for the revocation of any contract," such as fraud, duress, unconscionability, it was inapplicable to this case. Additionally, the Court turned to congressional intent to provide guidance on this issue and ultimately found that Congress did not manifest a clear intent for the NLRA to displace the FAA.

The Supreme Court's ruling is a favorable outcome for employers who wish to require employees to resolve disputes individually through arbitration. Importantly, this decision does not prevent an individual from filing a discrimination charge with the EEOC or related state agency or limit an employer from participating in a suit filled by such administrative agency, including the Department of Labor.

Important Sixth Circuit Decisions (continued)

An employer cannot deny a modified work schedule as unreasonable unless the employer can show why the employee is needed on a full-time schedule; merely stating that anything less than full-time employment is per se unreasonable will not relieve an employer of its ADA responsibilities."

In *McClellan v. Midwest Machining, Inc., No. 17-1992 (6th Cir. 2018)*, the Court allowed an Equal Pay Act and Title VII pregnancy bias suit to proceed even though McClellan signed an agreement releasing all claims and did not refund a severance payment paid to her in consideration for a legal waiver. The Court also held that Title VII and Equal Pay Act claims are not subject to the common law tender-back doctrine, which allows an innocent party to void an agreement if the agreement was tainted by duress, fraud, or mistake so long as the benefits received are tendered back.

McClellan, a telemarketer for Midwest since 2008, became pregnant in fall of 2015. Shortly thereafter, she was terminated in November of 2015. On the date of her termination, the President of Midwest allegedly handed her a document stating, "that she needed to sign it if [she] wanted any severance." McClellan filed a charge with the EEOC, then filed suit, alleging that Midwest terminated her because of her pregnancy, among other things. She testified she felt "pressured" and "bullied" into signing the waiver without a lawyer and later explained that she did not understand that the claims she released were discrimination claims. The Court reasoned "requiring recently discharged employees to return their severance before they can bring claims under Title VII and the Equal Pay Act would serve only to protect malfeasant employers at the expense of employees' statutory protections at the very time that those employees are most economically vulnerable…. Rather, the sum paid shall be deducted from any award determined to be due to the injured employee."

Mark S. Barnes
mbarnes@bugbeelawyers.com

Carl E. Habekost
chabekost@bugbeelawyers.com

Elizabeth L. Bolduc
ebolduc@bugbeelawyers.com

Tybo Alan Wilhelms, of counsel
twilhelms@bugbeelawyers.com

BUGBEE & CONKLE

www.bugbeelawyers.com