



U.S. Supreme Court Holds That ADA Does Not Entitle Disabled Individuals To Jobs That Endanger Their Own Health

The United States Supreme Court held that employers may refuse to hire a disabled individual when performance of the job would endanger the individual's own health. In *Chevron U.S.A., Inc. v. Echazabal*, Mario Echazabal twice applied for a job with Chevron, which agreed to hire him if he passed a physical exam. However, those exams showed liver abnormality or damage caused by Hepatitis C, a condition company doctors said would be aggravated by on-the-job exposure to toxins at the Chevron refinery. Based on that information, Chevron refused to hire him. Echazabal filed suit, claiming that Chevron's decision was based on his disability in violation of the Americans With Disabilities Act (ADA). Chevron obtained summary judgment, based on an EEOC regulation that permits employers to refuse to hire someone if the job would pose a direct threat to the individual's health. The Ninth Circuit reversed, though, agreeing with Echazabal that the regulation conflicted with the ADA and thus was invalid. The Supreme Court's decision upholds the regulation and Chevron's defense. While employers were previously allowed to consider whether placing a disabled individual in a certain position would pose a direct threat to others in the workplace, this case gives employers the important parallel power to factor in risks to the applicant's own health when making hiring decisions.

U.S. Supreme Court Strikes Down Continuing Violation Doctrine For Discrimination And Retaliation But Not For Hostile Work Environment Claims

The United States Supreme Court recently held that an employee's claim of harassment based on a hostile work environment is not time-barred if at least one harassing act falls within the required statutory filing period, but held that the same is not true for claims of discrimination or retaliation. In *National Railroad Passenger Corporation v. Morgan*, Morgan alleged that he had been subjected to discrimination and retaliation and had experienced a racially hostile work environment throughout his employment. The Ninth Circuit Court of Appeals had previously permitted employees to sue on discrimination claims that would ordinarily be time barred so long as they either were "sufficiently related" to incidents that fell within the statutory period or were part of a systematic practice of discrimination that took place, at least in part, within the limitations period. The Supreme Court held that Morgan could not recover for discriminatory or retaliatory acts that occurred outside the statutory time period, because those acts are easily identifiable, single occurrences that trigger an employee's duty to file an administrative charge. However, because a hostile work environment by its very nature involves repeated conduct over a period of days or even years, such claims were not barred so long as at least one alleged harassing act fell within the statutory time period. While the Court's decision maintains

the status quo in California for harassment claims, it is an important victory for employers in the discrimination and retaliation arenas, providing them with a strong defense to untimely claims.

Confidentiality Rule On Harassment Complaints Violates Federal Labor Law

The National Labor Relations Board (NLRB) recently held that an employer's confidentiality rule barring unionized employees from discussing sexual harassment complaints was unlawful and ordered the reinstatement of an employee that was terminated for violating the rule. Charles Weigand, a bus driver and editor of a union newsletter, was terminated for publishing articles critical of the company's handling of specific sexual harassment complaints. The NLRB found that unionized employees have the right to discuss among themselves the company's handling of sexual harassment complaints. Although recognizing that an employer has a valid interest in maintaining the confidentiality of some investigatory information, the NLRB found that the company's confidentiality rule was too broadly enforced. This ruling underscores the rights of employees to engage in "concerted activities for their mutual aid or protection," and limits employers' abilities to preserve the confidentiality of harassment investigations.

Termination Because Of Adultery Does Not Constitute Marital Status Discrimination

The Michigan Supreme Court recently held that state law did not protect an employee discharged solely because of adulterous conduct. In *Veenstra v. Washtenaw Country Club*, a golf instructor at a country club separated from his wife and began having an adulterous affair, activities which became well-known at the country club and were the subject of much discussion. Thereafter, the country club decided not to renew the instructor's yearly employment contract. The instructor claimed his termination constituted marital status discrimination, because he was fired for being separated from his wife and cohabiting with another woman. The Michigan Supreme Court found terminating someone because of adulterous conduct can be accomplished without regard to the person's marital status, and remanded the case for a determination of whether the instructor's pending divorce played a determining factor in the country club's decision. Despite this decision, California employers should be aware that, in addition to marital status discrimination, it is unlawful in California to base employment decisions on an individual's off-duty conduct unless there is a nexus between the conduct in issue and the individual's ability to perform the job.

REMINDER: New ID Theft Law Takes Effect July 1st.

As previously reported in the March 8, 2002 issue of the W.E.B., California's new law limiting certain uses of Social Security numbers takes effect on July 1, 2002. Employers should review the law's provisions and take steps to ensure compliance with its requirements.