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Weekly Employment Brief

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California Court Strikes Down Shareholder Non-Compete Clause Where Good Will Was Not Clear Component Of Stock Sale Price

A California appeals court recently made it more difficult for companies to enforce non-compete agreements against former employees. Although the general rule in California is that non-compete agreements are void, a California statute provides for a narrow exception when entered into as part of the sale by a shareholder of all of his or her shares in a corporation. However, the court in *Hill Medical Corp. v. Wycoff* (1/30/01) limited this exception even further by holding that to restrain a shareholder, there must be a clear indication that "the parties valued or considered *good will* as a component of the sale price." The court went on to note that when parties do not allocate a specific portion of the stock price to good will, a transaction may still meet the requirements of California law the shares. Nevertheless, California companies are well advised to clearly indicate that good will is a component of the stock sale price when accompanied by a non-competition agreement.

Reasonable Accommodation Under The ADA Does Not Require A Company To Violate Its Seniority System

Joining the side of eight other federal circuits around the country, the Ninth Circuit recently held that the Americans with Disabilities Act's reasonable accommodation requirement does not require an employer or union to violate the bona fide seniority provisions of its collective bargaining agreement. In fact, the court held in *Willis v. Pacific Maritime Association*, an accommodation requiring an employer to violate such a seniority system is per seunreasonable. The seniority system at issue gave the more senior workers highest priority for lighter duty assignments. Two disabled workers sued when they were denied the lighter duty assignments. The court chose to have seniority trump an accommodation obligation in order to avoid subjecting employers to the risk of claims for breach of a collective bargaining agreement in violating the seniority system.

EEOC Finds Health Plan's Failure To Cover Cost Of Birth Control Pills Violates The Pregnancy Discrimination Act

The EEOC recently decided that, in order to avoid violating Title VII, two employers' health care plans must cover the cost of prescription contraceptives and other devices. The Commission's decision was based on the Pregnancy Discrimination Act, which requires that expenses related to pregnancy be treated the same as expenses related to other medical conditions. The employers' health care plans covered vaccinations and other preventive care, and the Commission found no justification for excluding treatments that prevented pregnancy. Pregnancy is not a medical condition without risks, the Commission noted, and women may not be denied effective ways to avoid that condition.

Did The 1991 Civil Rights Act Signal The Demise Of Title VII Class Actions? One Court Says Yes

A district court judge in Pennsylvania denied class certification in *Miller v. Hygrade Food Products*, a race discrimination suit brought by black workers against a subsidiary of the Sara Lee Corp. In order to certify a class action, common issues must predominate. That hurdle was more easily overcome when the only relief

available was general injunctive and declaratory relief. However, the 1991 Civil Rights Act made compensatory and punitive damages available to employees harmed by Title VII violations, and the Pennsylvania court determined that calculating those damages would likely prove to be "quite an individualized task," thus necessitating individual adjudication of claims.

Followup: Union Withdraws One of Two Unfair Labor Practice Charges Against Etown.com

Union organizers at Etown.com withdrew one of their two unfair labor practice charges against the company following the completion of the NLRB's investigation into that charge. Organizers accused the company of illegally firing union movement leaders and sympathizers. The NLRB is still investigating charges that the company tried to illegally influence the election by threatening closure of the company if the union succeeded. That investigation should be completed shortly. An NLRB supervisor estimated that, assuming a rapid resolution of the remaining charge, the election could be held within a month.

Reminder to post Cal/OSHA Summary of Injuries

As a reminder to all California employers with 11 or more employees, (with certain exceptions) Cal/OSHA requires such employers to maintain a Log and Summary of Occupational Injuries and Illness (Cal/OSHA Form 200) and to annually post the Summary on February 1 and keep it posted until March 1, even if there were no injuries to record.