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Weekly Employment Brief

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U.S. Supreme Court Considers ADA Defense Based On Direct Threat To Self

The Supreme Court is now considering whether an employer may refuse to hire an individual whose disability could cause danger to himself through his employment. In *Chevron U.S.A. Inc. v. Echazabal,* plaintiff was denied a job that would have exposed him to toxic substances that could have complicated his Hepatitis C. The Ninth Circuit Court of Appeals (which has jurisdiction in California) held that an employer may not deny the employee a job where the condition could present a danger only to him/herself and not to others. The employer, however, argued to the Supreme Court that it need not employ individuals whose disability presents a direct threat to their own safety. Companies across the country will closely monitor this Supreme Court decision and its impact on the hiring and promotion of disabled individuals and those with medical conditions that could present a danger to the person.

"Computer Use" Policy Key To Defense Of Wrongful Discharge Lawsuit

In *TBG v. Zieminski* the company discharged the employee for accessing pornographic sites in violation of its computer use policy. The employee sued for wrongful discharge. The employer had provided plaintiff with a computer to use at home and insisted that he return the computer without deleting the hard drive. The employee refused to return the computer on the ground that the hard drive contained personal files. Before providing him with the computer, however, the employer had the employee sign an acknowledgment of its policy that the computer was to be used for business purposes only, and that the company reserved the right to monitor and inspect his usage. The court held that the computer use policy and the employee's acknowledgment effectively defeated any expectation of privacy in the employee's use of the computer for personal reasons. The court's decision illustrates the importance of well-written "computer use" policies in defending against wrongful discharge, invasion of privacy and related claims.

Louisiana State Court Awards 18 Years Of Front-Pay for FMLA Violation

A state appellate court in Louisiana recently approved an award of 18 years of front-pay to an employee terminated in violation of the FMLA. In *Williams v. Rubicon Inc.,* plaintiff's employer terminated him while he was out on paid sick leave recovering from surgery. After determining that the employer violated the FMLA, the court determined that the plaintiff was entitled to front pay until his projected retirement age of 65. The court based its award on a determination that plaintiff's termination would continue to impede his ability to obtain comparable employment in the future. Although we anticipate that front-pay awards of this magnitude in FMLA cases will be rare, the risk of such liability presents a serious motivation for employers to carefully review terminations of employees on leave under the FMLA.

Court Strikes U.S. Army's Affirmative Action Program As Discriminatory Against White Men.

Continuing the courts' disapproval of affirmative action programs in both private and public sector employment, a federal judge in Washington, D.C., struck down the U.S. Army's officer promotion process - which considers as a factor past bias against women and minorities - on grounds it discriminates against white men. The federal court ruled that the program established a preference in favor of one race or gender over another, and was therefore unconstitutional. The court's decision confirms that hiring, promotion and termination procedures must be race and gender neutral.