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Weekly Employment Brief

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Chef Gets Her Day in Court Over Remark that Cooking is "A Man's Job"

The sexist adage "a woman's place is in the kitchen" took on a new twist in a discrimination case out of New York, where a former female chef at a Marriott Hotel survived a motion to dismiss her sex discrimination claim. The chef's claims were based on the alleged denial of a promotion; the hotel's refusal to allow her to attend a culinary class; and offensive comments by the hotel's executive chef, including a reference to her food presentation as "too girly;" and a statement that cooking was a man's job. Marriott moved to dismiss the action on the ground that legitimate business reasons (specifically, evidence that the chef did not get along with her staff) existed for the chef's alleged constructive termination. However, while it acknowledged the case presented a close question, the court found that the chef presented enough evidence to create at least an inference that Marriott's stated reasons for the termination were a pretext for discrimination. Employers should be aware that, while seemingly innocuous, comments like those made by the male chef can mean the difference in whether a discrimination case goes to trial.

Court Ruling is A Victory for Contract Worker

A Judge in San Mateo County, California rendered an important judgment in favor of an Indian H-1B contract worker against a temp agency that attempted to enforce a noncompetition agreement against him. The worker came to the United States in March 1998 and joined Compubahn, a Bay Area technology staffing company. He entered into an agreement with Compubahn which prohibited him from working for Compubahn's clients for one year after terminating his relationship with the agency, and which imposed a $25,000 fee if he breached the agreement. However, a few months prior to the completion of his contract with Compubahn, the worker left the agency and joined Oracle, a Compubahn client, as an employee. Litigation ensued, and the court rejected Compubahn's efforts to enforce the noncompetition/penalty provision, finding that it was void and unenforceable, and prohibiting Compubahn from using the provision in future contracts. This case is further evidence of the reluctance of California courts to enforce agreements that restrict free movement of labor, and it should force staffing agencies to think twice before attempting to enforce such agreements in California.

Despite Downturn in Economy, Strong Demand Exists for High-Tech Workers

A recent study by the Information Technology Association of America revealed that, despite a weakened economy, U.S. employers will need approximately 900,000 new information technology workers by the end of 2001, yet nearly half of those openings will remain unfilled. The study revealed that companies are in dire need of technical support positions, which will make up nearly one quarter of all new high-tech job postings during the next year. This study confirms that, despite widespread layoffs, the failure of companies large and small to meet their earnings estimates, and other negative aspects of the economy, high-tech workers are still needed and remain in short supply.

Prospective Employees Continue to be Confronted with Improper Interview Questions by Employers

A recent study by FindLaw.com, a legal resources website, provides that more than twenty percent of workers surveyed indicated that they had been asked an inappropriate question at a job interview. Women (at 23%) were more likely to be confronted with an improper question at an interview, compared to men (18%). This study should further motivate employers to educate their hiring managers and interviewers about the "dos and don'ts" when interviewing prospective employees.

Affirmative Action Takes Center Stage Again in U.S. Supreme Court

In an important case that may sound the death knell of federal affirmative action in awarding government contracts, the U.S. Government's Federal Highway Administration Program, which offers contractors financial incentives to hire minority-owned subcontractors, will be addressed by the Supreme Court for a third time in six years in the case of Adarand v. Pena. Adarand, a white-owned construction firm, initially challenged the program in 1995, characterizing it as unconstitutional race-based discrimination. The Supreme Court ruled that the constitutionality of the program should be examined by applying "strict scrutiny," a difficult standard to meet for those seeking to enforce affirmative action programs. The U.S. government subsequently revised the program to ensure that the contractors it benefits were truly disadvantaged, and that no quotas were used, which led to another challenge by Adarand. After the case bounced back and forth between the Supreme Court and lower courts, the Supreme Court recently agreed to examine the case again to clarify the strict scrutiny standard in the context of the highway program. The Court's decision will hopefully provide guidance on how much scrutiny should be employed in the strict scrutiny analysis, and many believe that the current Court, already skeptical of affirmative action, will articulate a standard so difficult to meet that the program will be rendered unconstitutional.