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Weekly Employment Brief

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Pregnancy Discrimination Claim Can Go Forward Because Of Dispute Over Validity Of Employer's Termination Rationale

The Ninth Circuit Court of Appeals has permitted an employee to proceed with her pregnancy discrimination case based on the company's reliance on misconduct discovered after the fact. In *Fulkerson v. Ameritite, Inc.,* Amy Fulkerson received favorable evaluations from Ameritite up to the time she revealed her pregnancy, but she was terminated soon thereafter. The company claimed to have terminated Fulkerson because she lied about being ill. The trial court granted Ameritite's motion for summary judgment, but the Ninth Circuit (whose jurisdiction includes California) reversed the decision. The appellate court noted there was evidence the company did not learn about the lie until after the termination, since it did not include this reason in its documentation about the termination. In addition, there was evidence that when Ameritite doubted a medical excuse it received from a male employee, it provided him with numerous opportunities to return to work. This case underscores the importance of documenting all reasons for a termination and of treating all employees uniformly. Although misconduct discovered after a termination may serve to limit a plaintiff's damages, such information may not be offered as a reason for termination after the fact.

Comments About Employee's Body Odor Do Not Establish Race or National Origin Discrimination

A federal appellate court has held that a supervisor's comments about an employee's body odor are not enough to establish a claim for race or national origin discrimination or harassment. In *Hannoon v. Fawn Engineering,* Said Hannoon worked in Fawn Engineering's Information Systems department. During an early meeting with Hannoon, his supervisor informed him that other employees had complained about Hannoon's body odor and that the supervisor, too, had noticed the problem. At a subsequent review meeting, Hannoon's supervisor told him about numerous areas where his performance needed improvement. After a month in which Hannoon failed to improve his performance, the company terminated him. Hannoon sued under Title VII and Iowa state law, claiming the reference to body odor was directly related to his race and national origin. The Eighth Circuit affirmed the trial court's grant of summary judgment for Fawn Engineering, holding that the comments about Hannoon's body odor did not suggest any reference to race or national origin. Alternatively, the court found that the well-documented performance problems constituted a legitimate reason for the termination. Although this case was a victory for the employer, companies should be careful about comments they make to employees that could be construed as relating negatively to race or national origin.

Post-September 11th Actions Toward Lebanese-American Executive May Have Resulted in Constructive Discharge

A federal district court in California has held that a Lebanese-American executive can move forward with his lawsuit arising from allegedly insensitive remarks and actions by other company executives shortly after the September 11th terrorist attacks. In *Maghribi v. Advanced Micro Devices,* Walid Maghribi sued AMD under Title VII, alleging constructive discharge based on his national origin and religion. During his 15 years of employment, Maghribi had received numerous promotions and bonuses, eventually becoming a President of an AMD division and a Senior Vice President of the company in February 2001. Maghribi claimed that, after this promotion, he spearheaded negotiations to establish a joint venture with another company, a move supported by the AMD Executive Council. After September 11th, Maghribi alleges that AMD's CEO asked him about his national origin and religion, and expressed surprise when Maghribi told him he was an Arab and a Muslim. After this revelation, Maghribi and his wife allegedly heard several anecdotes from other AMD executives which they perceived to be inappropriate and offensive. Maghribi alleges he was told in an unpleasant manner and in front of his colleagues, that he should stop work on the joint venture and convince the co-venturer to stop also. Immediately thereafter, Maghribi tendered his resignation. When Maghribi's replacement began work, Maghribi maintains that the joint venture negotiations became a priority again. In denying AMD's summary judgment motion, the court held that in view of the emotionally-charged atmosphere in the aftermath of September 11th as well as Maghribi's highly visible position within the company, these events, if true, could give rise to his claim for constructive discharge. The alleged vitiation of Maghribi's authority in front of colleagues could have made his working conditions intolerable. Particularly in light of current world events, this case serves as an important reminder for employers to maintain a workplace environment sensitive to diversity.

SARS Update

The U.S. Centers for Disease Control and Prevention (CDC) has issued "travel advisories" for Taiwan, Mainland China and Hong Kong. These advisories include a recommendation against non-essential travel. Companies should not require employees (and may want to consider not permitting employees) to travel to these affected areas. Singapore has recently been downgraded from a travel advisory to the less-serious "travel alert," which does not include a recommendation against non-essential travel. Travel alerts also remain in effect for Toronto, Canada and Hanoi, Vietnam. Although companies may require business travel to regions covered by travel alerts, they may choose to treat such travel as being on a voluntary basis only.