AFFILIATE OF SHRM SOCIETY FOR HUMAN RESOURCE MANAGEMENT

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Cut and Paste Post
March, 2013

The Legislature Begins…

The Montana Legislature has reached the deadline for submission of bills. As we traverse through the rest of the legislative session, I will be supplying movement in both the house and the senate on any bills. The attached excel spreadsheet outlines the bills currently in movement in Montana State Legislature.

In other news…

Title VII Case

Employer's Retaliatory Actions Not Considered 'Petty Slights'

The 4th U.S. Circuit Court of Appeals overturned the dismissal of a retaliation claim under Title VII of the Civil Rights Act in a case where an employer subjected an employee to actions that were capable of dissuading a reasonable employee from complaining about discrimination.

Shana Maron, a fundraiser for Virginia Polytechnic Institute and State University (Virginia Tech), alleged that the university retaliated against her based on her reports of sex discrimination. The district court set aside a jury verdict in Maron's favor, entering judgment as a matter of law on Maron's retaliation claim. The 4th Circuit reversed the lower court's judgment.

To establish a prima facie case of retaliation, Maron was required to show that she was engaged in a protected activity, that her employer acted adversely against her, and that the protected activity and the adverse action were causally connected. The parties' dispute centered on whether Maron presented sufficient evidence from which a jury could conclude that Virginia Tech acted adversely against her and that any such action occurred as a result of her protected activity.

To qualify as an adverse action under the anti-retaliation provision of Title VII, the employer's action must be "materially adverse" to the employee and be capable of dissuading a reasonable employee from complaining about discrimination. "Petty slights, minor annoyances and simple lack of good manners" do not qualify as adverse actions because such actions typically would not deter a worker from complaining. Virginia Tech contended that, at most, a jury could have found that Maron suffered "petty slights."

However, the 4th Circuit disagreed with Virginia Tech based on three sets of circumstances that occurred after Maron engaged in the protected activity of filing sex-discrimination complaints.

First, the 4th Circuit considered statements made to Maron during a meeting to discuss a disciplinary warning for her repeated e-mail communications about personal issues. Maron asserted that Elizabeth Flanagan, the vice president for university development, told her that, in addition to the e-mails, she would be watching her "very, very closely" and that she needed to "stop pursuing the things that she was pursuing or she would ruin her career in a very public way." Second, Maron testified that her "benchmark" achievements for promotion and a salary increase were "spontaneously changed" without cause and that she failed to achieve "two pieces of the benchmarks that were unachievable for anyone," one of which was required of Maron and not of other employees. Third, Maron claimed that during her three-month leave under the Family and Medical Leave Act, after she contracted mononucleosis, her supervisors attempted to replace her. Consequently, the 4th Circuit determined that, when construed in the light most favorable to Maron, her account of these actions provided a legally sufficient basis on which a jury could have concluded that she suffered materially adverse employment actions that were causally connected to her earlier reports of sex discrimination.

Maron v. Virginia Polytechnic Institute, 4th Cir., No. 12-1146 (Jan. 31, 2013).

Professional Pointer: An employer may not fire, demote, harass or otherwise "retaliate" against an individual for opposing discrimination. Examples of protected opposition include complaining to anyone about alleged discrimination against oneself or others, threatening to file a charge of discrimination, picketing in opposition to discrimination, or refusing to obey an order reasonably believed to be discriminatory.

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In the 112th Congress for consideration:

The Paycheck Fairness Act (S. 797, H.R. 1519)

To amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes.

The Employment Non-Discrimination Act (s.811, H.R. 1397)

To prohibit employment discrimination on the basis of sexual orientation or gender identity.

The Cut and Paste will be increasing in frequency as we see the legislative sessions start speeding up with movement of the bills. More coming soon…