CUT AND PASTE POST
SEPTEMBER 2017

Recent Montana Supreme Court Decisions

Major Wage and Hour Award Overturned by Supreme Court

In 2009, current and retired police officers filed suit against the City of Billings, claiming it had not followed its collective bargaining agreements when it calculated "longevity" wage benefits. The District Court found in favor of the employees, entering a final judgment requiring the City to pay the Officers $932,960.90, imposing a 110% penalty of $1,026,256.99, and awarding attorneys' fees of $653,072.63 and costs of $125,854.60, for a total of $2,738,145.12. The City appealed the district court's order and judgment.

If a contract provision is clear and unambiguous, Courts must apply the language as written. However, if a contract term is ambiguous, in interpreting the term the Court must evaluate the intent of the parties to the contract. If the court determines that the instrument contains no ambiguity, extrinsic evidence may not be considered.

On August 28, 2017, the Montana Supreme Court held that the district court erred by concluding as a matter of law that the longevity provisions of the subject CBAs were unambiguous. In this case, the differing language of the successive CBAs were reasonably subject to more than one interpretation, and the blanket exclusion of all extrinsic evidence offered by the City—while selectively relying on other extrinsic evidence—was likewise erroneous. Accordingly, the court reversed and remanded for further proceedings.

The case is *Watters v. City of Billings*, DA 16-0594

Professional Pointer: Make sure your contracts are clear and unambiguous!

Select your Forum Carefully

Energy West is a Montana corporation and a corporate subsidiary of Gas Natural, Inc.—an Ohio corporation with corporate offices in Ohio and Montana. Harrington entered into an employment agreement with Gas Natural in Ohio; Harrington resided and worked primarily in Ohio and provided services to Energy West from Gas Natural's Ohio office, and Energy West issued Harrington's paychecks and paid Harrington's payroll taxes, withholdings, and insurance premiums to the State of Ohio.

Harrington was eventually terminated by Energy West. After his termination, he filed suit in Montana against Energy West alleging wrongful discharge, negligent infliction of emotional distress, and defamation. The district court granted Defendant's motion to dismiss for lack of subject-matter jurisdiction, concluding that Ohio law governed or, alternatively, that Ohio was the appropriate forum to exercise jurisdiction. Harrington appealed.

The Montana Supreme Court vacated the district court's dismissal, holding that Montana courts had subject-matter jurisdiction over

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Harrington's claim, and remanded the case for further proceedings to consider whether dismissal under the doctrine of forum non conveniens was appropriate.

Forum non conveniens is a discretionary power that allows courts to dismiss a case where another court, or forum, is much better suited to hear the case.

On remand, the district court denied a motion by Harrington to amend the complaint and granted Defendant's motion to dismiss under forum non conveniens. Harrington appealed again. This time, (in June, 2017), the Supreme Court affirmed, holding that the district court did not abuse its discretion by determining that resolution of Plaintiff's claims in Ohio would promote the convenience of witnesses and the ends of justice. (I left out information about the attempt to amend the complaint because it wasn't pertinent to the forum non conveniens question!)

The case is *Harrington II v. Energy West Inc*. DA 16-0518

Professional *Pointer*: This case reminds us of the importance of making sure we choose the proper forum to hear a legal challenge.

Federal Employment Law Update

- **Final Decision on White Collar Salary Rule** - On August 31, 2017, a federal judge in Texas overturned an Obama-era federal overtime rule (final rule) that would have increased the white collar and highly compensated employee salaries and would have automatically updated the salary and compensation levels every three years to account for inflation.

  The court's ruling that the final rule was invalid is effective immediately. Read more about this on the SHRM website: https://www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/Pages/Judge-Strikes-Down-Obama-DOL%27s-Overtime-Rule.aspx

- **Revised EEO-1 "Component 2" Is on hold -** On August 29, 2017, the Office of Management and Budget notified the Equal Employment Opportunity Commission (EEOC) that it is initiating a review and immediate stay of the new EEO-1 pay reporting requirements (Component 2). These pay reporting requirements were scheduled to take effect with the next filing cycle in March 2018.

  

  The previously approved EEO-1 form, which collects data on race, ethnicity, and gender by occupational category, will remain in effect. Employers should plan to comply with the earlier approved EEO-1 reporting requirements (Component 1) by the previously set filing date of March 2018.

  Read the EEOC press release

- **"Dreamers" Program Phase Out** - On September 5, 2017, the Department of Homeland Security (DHS) announced and initiated the phase-out of the Deferred Action for Childhood Arrivals (DACA). The DHS will provide a limited, six-month window during which it will consider certain requests for DACA and applications for work authorization, under specific parameters. For details, read the memorandum from Acting DHS Secretary Elaine Duke and the USCIS press release.