SULLIVAN HAYES & QUINN, LLC

Human Resource and Workplace Law Developments

In This Issue

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1. Race Discrimination Limited to Immutable Characteristics:
The U.S. Supreme Court refused to take an appeal of an 11th Circuit U.S. Court of Appeals decision that had ruled that an employer's refusal to hire a qualified black woman because she wore dreadlocks was a violation of Title VII of the Civil Rights Act. The 11th Circuit ruling was based on dreadlocks not being an inherent characteristic of race. The 11th Circuit cited a 5th Circuit Court decision that had ruled that a Title VII violation had to be based on an immutable characteristic. The 11th Circuit distinguished discrimination based

on wearing hair in dreadlocks from discrimination based on "black hair texture," which it found to be an immutable trait of blackness.

Earlier, the 11th Circuit refused an EEOC request that the Court review its decision en banc.

The Supreme Court's action in essence lets the 11th Circuit decision stand as current law.

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2. Massachusetts Employment Applications Need to be Revisited:
Information that an employer can seek on a written employment application is changed by the Criminal Justice Reform Law signed by Governor Baker. Effective October 13, 2018, information regarding a misdemeanor conviction that occurred three or more years prior to the application cannot be sought. This is a change from the present five years. An exception is if the person has been convicted of any offense within that three-year period.

SH&Q OBSERVATION: *Applications, as well as handbooks, need to be updated and revised to meet a host of recent changes in regulations. Interviewers must also be up-to-date and trained in developing requirements.*

Because of state and federal criminal background search developments, an employer should consider using a separate inquiry form for individuals that are not initially screened out when the initial applicants are screened.

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3. Prohibited Sexual Harassment Training Required in New York City:
Beginning April 1, 2019, employers of fifteen or more employees are required to conduct annual interactive training on prohibited sexual harassment, and within 90 days of hire for new employees.

Plus, the jurisdiction of the New York City Commission on Human Rights in sexual harassment cases has been revised to include employers of just four employees. The Statute of Limitations on sexual harassment complaints has been increased from one year to three years.

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4. Vermont Joins States Banning Inquiry into an Applicant's Salary History:
Effective July 1, 2018, application and interview questions about an applicant's salary history are banned in Vermont.

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5. "It's Only a Game!"
How often has that been said; how often has that been thought, by an observer of a sport? But alas, not by employment lawyers who see the crops-that-will-feed-them!

1. Professional Baseball Players Sue for Overtime Pay:
   The U.S. Court of Appeals (9th Circuit) is dealing with an overtime/wage-hour lawsuit by minor league professional players who claim their "work day" begins when they arrive at the ball park to put on their cleats and uniform; and then warm up and stretch; and perform pre-game batting and fielding practice; and, of course, standing during the National Anthem; and, oh yes, playing the ball game; and then taking post-game showers. According to the players, all that can typically take nine hours. And what happened to "professional" baseball?

2. And on the Major League Scene:
   Chicago Cubs Professional Baseball Club is sued for wrongly classifying a scout of future players as exempt from Fair Labor Standards Act's overtime provisions and then not having offered the scout a new contract.

3. Professional NFL Players Challenge Their Attorneys' Fees:
   A federal court awarded $112.5 million to the lawyers for a group of professional football players who had brought a class action for concussions and brain injuries. The ex-players are now challenging that multi-million dollar fee award to their lawyer.

4. Woman Martial Arts Fighter Files NLRB ULP Charges:
   The mixed martial arts fighter known as "The Peacemaker" has filed NLRB unfair labor practice charges against the UFC, claiming she is not being given professional fights as retaliation for her union organizing. The UFC defended, claiming "The "Peacemaker" is an independent contractor.

5. Ex-NFL Players Sue Helmet Manufacturer:
   A federal court is faced with a lawsuit by former professional football players against a football helmet manufacturer. The ex-players claim brain injuries. The helmet maker defends, arguing the claim is so intertwined with the players' labor agreement so as to make the claim pre-empted by the Labor Management Relations Act.

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6. NLRB General Counsel Guidance Rejecting Union Recordings of Managers:

The General Counsel Director of Advice ("NLRB") issued a memorandum stating that an employer lawfully denied a union's request to record investigatory interviews between a manager and workers, which the union had

claimed it needed for grievances challenging employee discipline. General Counsel said that it was the NLRB's long-standing policy disfavoring verbatim recordings of meetings between employers and unions for collective bargaining purposes. General Counsel also pointed out that the request and denial involved recordings made by union representatives and not by employees.

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7. Tax-Saving Information Request Brings NLRB Union Unfair Labor Practice Charge:

AT&T has been hit with a union's unfair labor practice charge for not explaining how the Company is using its savings resulting from the recent tax law change.

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