

Recent Employment Law Decisions: January 2008

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ERISA: preemption; purchase of insurance as employee benefit plan encompassed within ERISA

Shearer v. Southwest Serv. Life Ins. Co., No. 07-20646, 516 F.3d 276 (5th Cir. Jan. 31, 2008)

In this opinion, the court holds that the mere purchase of insurance premiums alone does not make the insurance subject to ERISA's preemption. The employer paid insurance premiums on two employees' insurance policies, but did not pay premiums for any other employees. The court held that a court must focus on the employer and its involvement in the administration of the plan. If the employer does no more than purchase insurance for its employees and has no further involvement with the collection of premiums, administration of the policy or submission of claims, the employer has not established an ERISA plan. Under the facts of the case, the court holds that there was no ERISA plan.

ERISA: preemption; preservation of error for motion to remand

McAteer v. Silverleaf Resorts Inc., No. 06-41725, 514 F.3d 411 (5th Cir. Jan. 15, 2008)

This opinion sets out two important holdings. First, the court holds that the filing of a motion to remand preserves a contention that the claims are not preempted by ERISA even if the claimant later voluntarily adds claims that are preempted. However, the court goes on and holds that considerations of finality and economy may result in affirming a judgment despite an improper removal. In its analysis of these considerations as applied to McAteer's claims, court observes that the case had spent little time in federal court and the court therefore holds that remand was still a possibility.

In a second holding, the court determines that the plaintiff's state-law negligence claims for failing to maintain a safe workplace are not preempted by ERISA even when the employee signed a waiver of such claims in order to participate in the ERISA plan. The court reasoned that an employer could effectively preempt all claims merely by mentioning them in an ERISA plan.

Title VII & Section 1983: hostile workplace; punitive damages; time limitations on evidence of prior conduct

Abner v. Kansas City Southern RR, No. 06-30476, 513 F.3d 154 (5th Cir Jan. 2, 2008)

The court in this case holds that an award of punitive damages was not constitutionally infirm when the district judge granted a \$1 nominal damage award. The court concluded that nothing in the text of Title VII limited an award of punitive damages to cases in which the plaintiff also receives compensatory damages. The court further notes that Title VII puts a cap on punitive damages. The court rejected the assertion that the award violates *BMW of North America v. Gore* because the combination of a statutory cap and a high threshold of culpability confines the award to a level tolerated by due process.

The court also considered whether the district court erred in adopting a 10-year rule that permitted the plaintiffs to testify about incidents contributing to a hostile workplace which occurred as far back as 10 years. The court concludes that neither the 10-year period nor the admission of testimony outside the 10 years caused prejudicial error. It should be noted that the court distinguishes hostile work environment cases from other types of discrimination claims and notes that the very nature of a hostile work environment claim involves repeated conduct of a period of days or even years.

Employment agreements: trade secrets; confidentiality agreements

Global Water Group, Inc. v. Atchley, No. 05-06-00709-CV, 244 S.W.3d 924 (Tex. App.—Dallas January 9, 2008, pet. filed)

This opinion holds that Global Water Group did not establish the existence of a trade secret. Global Water Group's lack of evidence of a discrete formula made proof of a trade secret violation very difficult.

The court also holds that Global Water Group had no standing to enforce a confidentiality agreement against a shareholder of a predecessor corporation, "Global." Global Water Group could not enforce the confidentiality agreement because although it had purchased assets of Global, it did not purchase the stock holdings of Global and it had never merged with Global.

Age discrimination: limitations under the TCHRA; exhaustion of administrative remedies

Ashcroft v. HEPC-Anatole, Inc., No. 05-07-00123-CV, 244 S.W.3d 649 (Tex. App.—Dallas Jan. 18, 2008, no pet.)

In this case the court holds that plaintiff failed to exhaust her administrative remedies by failing to file her claim with the EEOC or Texas Workforce Commission within the 180-day deadline proscribed by Texas Labor Code Section 21.202. Section 21.202 of the Texas Labor Code requires that a plaintiff file his or her claim with the Texas Workforce Commission within 180 days after the date of the unlawful employment

practice. The plaintiff filed her claim with the EEOC more than 200 days after the act of discrimination. After the trial court dismissed her claim for failure to exhaust her administrative remedies, she argued that the filing of her claim within the 300-day limitations applicable to claims filed with the EEOC should satisfy both the EEOC and the TWC. The court of appeals disagreed and held that the failure to file within 180 days amounted to a failure to exhaust administrative remedies, requiring the dismissal of her claims.

Title VII: race discrimination; exhaustion of administrative remedies

Port Arthur ISD v. Mathews, No. 09-07-162-CV, 245 S.W.3d 635 (Tex. App.—Beaumont Jan. 31, 2008, n.p.h.)

This opinion tackles the question of whether an employee must file an EEOC complaint prior to bringing suit to complain of retaliation arising after the settlement of an earlier discrimination complaint.

The plaintiff filed an age and race discrimination claim with the EEOC. Subsequently, the parties signed a settlement agreement. The agreement authorized the EEOC to investigate compliance and to enforce the settlement agreement. Later, the plaintiff sued for breach of the agreement and for retaliation. The defendant school district filed a plea in abatement and asserted that the plaintiff had not exhausted his administrative remedies prior to filing suit.

Noting that the retaliation claim arose after the settlement agreement, the court of appeals held that the plaintiff was required to file a complaint with the EEOC before bringing the retaliation claim. In addressing the separate breach of contract claim, the court of appeals observes and discusses federal circuit court opinions that reached divergent results on whether a plaintiff must exhaust administrative remedies prior to enforcing a settlement agreement. Ultimately, the court concludes that because the settlement agreement contemplated further involvement by the EEOC and because there was no compelling reason to ignore the statutorily-required exhaustion of remedies, the plaintiff was required to file a complaint with the EEOC before filing suit.