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Maryland Federal Court Issues Pro-Employer Decisions:

1. Reassignment is not an "adverse action" under Title VII.

In a victory for employers, the U.S. District Court for the District of Maryland held that an employer did not violate Title VII of the Civil Rights Act of 1964, as amended, when it reassigned an employee and gave her a written warning for poor attendance. In *Toulan v. DAP Products, Inc.,* (Jan, 17, 2007), the court declared that reassignment itself is not actionable unless it is accompanied by a decrease in compensation, job title, level of responsibility or opportunity for promotion. Furthermore, a warning for poor performance will not form the basis of liability under Title VII unless the employee can show that the warning could result in some "tangible consequence" to the employee's career. A reprimand that "only bruises an employee's ego or reputation" is not actionable under Title VII.

2. Remarks outside the workplace may not support a hostile work environment claim.

In *Elliott v. Md. Dep't of Human Resources,* (February 22, 2007), the court dismissed the "racially hostile workplace" claim of the plaintiff, Valerie Elliott. Ms. Elliott based her Title VII claim on allegations of racial slurs made by co-workers outside the workplace and an incident where Ms. Elliott learned that a co-worker had used the "n— word." Ms. Elliott never personally heard the racial slurs, but nonetheless, she claimed her co-worker's use of them created a hostile work environment for her. The court disagreed, holding that while the use of the racial slurs should never be condoned, Ms. Elliott could not state a cause of action because none of the words were directed at her personally, nor did she personally hear the slurs. Also, the employer promptly responded to each incident, arranging for a meeting between the parties to work out their differences, instituting sensitivity training and emphasizing its zero-tolerance policy.

3. Court narrowly construes FMLA definition of "equivalent position."

In *Csicsmann v. CGI-AMS, Inc.,* (December 12, 2006), the court held that an employer did not violate the Family and Medical Leave Act of 1993 ("FMLA") when it reassigned an employee returning from hip surgery to a position which was not quite the same as the one he held prior to taking FMLA leave. The employee claimed the new position was "less prestigious" and had "different responsibilities." However, the court held that the reassignment did not violate the FMLA because the employee's "salary, title, bonus eligibility, health care, and retirement benefits remain[ed] unchanged in his new position." The court held that the FMLA's definition of "equivalent position" does not take into consideration the "intangible aspects" of a position.

Team Leader
Leslie Robert Stellman
410.339.6752
lstellman@hpklegal.com

Principals
Rochelle Eisenberg
410.339.6773
reisenberg@hpklegal.com

Edmund O'Meally
410.339.6757
eomeally@hpklegal.com

Steve Schwartzman
410.339.6746
sschwartzman@hpklegal.com

Lynn Brenneman
410.339.6779
lbrenneman@hpklegal.com

Associates
Lisa Y. Settles
410.339.5783
lsettles@hpklegal.com

Alizah Diamond
410.339.5793
adiamond@hpklegal.com

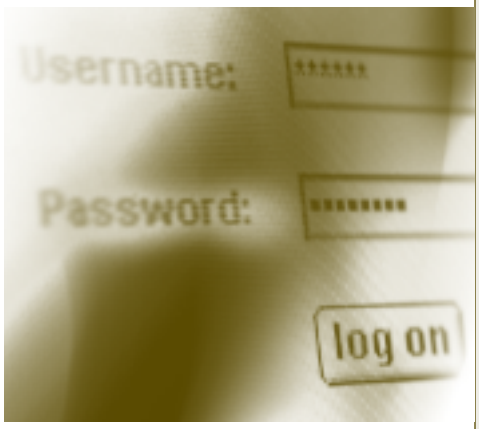
Are Your Employee Handbook Disclaimers Effective?

Most business owners know that the best way to put employees on notice of their "at will" status is to have an employee handbook with a disclaimer advising that the employment relationship may be terminated at any time and for any reason. But, employers must be careful not to bury their disclaimers in the fine print of the handbook. In *Whittington v. City of Crisfield,* (November 2, 2006), the United States Court of Appeals for the Fourth Circuit held that an employer waived its right to fire an employee for any reason because the handbook disclaimer was poorly worded and buried deep in the handbook's discipline section. Because of the poor wording and the placement of the disclaimer, the court held that the employees might have reasonably believed that they could only be fired "for cause." The lesson in this case is that business owners should make sure that their "at will" disclaimers are clearly stated and set out in bold type at the beginning of any employee handbook.

Employee Loses Unemployment Benefits By Turning Down Offer of Seasonal Work

In *Scherer Tax Service, Inc. v. DLLR,* (March 2007), the Maryland Court of Special Appeals held that a claimant was disqualified from receiving unemployment benefits when she rejected her former employer's offer of reinstatement on a temporary, or seasonal, basis. The former employee had rejected the offer because she wanted to hold out for a "permanent" position. However, the Court held that the former employee acted unreasonably in rejecting this seasonal work, as she could have accepted the job and still continued her search for full-time employment.

NLRB To Consider Employer Bans On E-Mail Use



Many business owners try to restrict employees from using their business's e-mail system for personal use. But can a business-owner prevent employees from using e-mails to discuss the need for a union? Traditionally, the National Labor Relations Board ("NLRB") has held that an employer can prohibit employees from soliciting one another, so long as the employer applies its rule across the board to all types of employee solicitations. But, in March 2007, the NLRB held oral argument to decide whether employees have a right to use their employer's e-mail system for union organizing. Whichever way the Board rules, this case highlights the need for all businesses to have written policies governing employee solicitations and access to computer, internet and e-mail systems.

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To schedule a seminar, call **Steve Schwartzman** at **410-339-6746** or e-mail at **sschwartzman@hpklegal.com**.