MANCHESTER AREA HUMAN RESOURCES ASSOCIATION

APRIL 7, 2015

LEGAL AND LEGISLATIVE UPDATE

by

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Two Recent Workplace Decisions from U.S. Supreme Court

A. When does the Work Day End? High Court Says: "*It Depends*."

When it comes to wages, employees and employers are often at odds. Employees generally want to be compensated for all the time they are required to be at work. Employers, on the other hand, generally want to compensate employees only for the time they actually spend working and benefiting the company. In a rare unanimous decision, the United States Supreme Court recently commented on this divide.

The case is called Integrity Staffing Solutions, Inc. v. Busk. It involves hourly employees who worked at two warehouses in Nevada. Each day these employees retrieved, packaged, and shipped commercial goods for internet giant Amazon.com. To protect against theft, the employer, Integrity Staffing Solutions, required each employee to undergo a security screening at the end of the day. According to court documents, employees routinely spent 25 minutes each day passing through security. They were not compensated for this time. Eventually, two employees sued Integrity Staffing Solutions for alleged violations of the Fair Labor Standards Act ("FLSA").

On appeal, the Supreme Court needed to decide whether the time spent going through security was compensable under the FLSA. This is not an easy task. On the one hand, Integrity

Staffing Solutions required each employee to undergo daily security screenings. The screenings were mandatory; an employee could not work for Integrity Staffing Solutions without submitting to them. Over the course of a year, an average employee might spend over 100 hours going through security and would never receive compensation for that time. On the other hand, the security checks did not technically relate to the task at hand. Sure, they protected against theft, but were they integral to the task of retrieving, packing, and shipping consumer goods? Did they advance the company's bottom line?

The Court ruled in favor of Integrity Staffing Solutions. Specifically, the Court found that the security screenings were not integral and indispensable to the employees' principal activities (i.e. filling orders for Amazon.com). Accordingly, the time spent passing through security each day was deemed non-compensable under the FLSA.

Integrity Staffing Solutions raises the age-old question: what is work? Enacted in 1938, the FLSA established minimum wage and overtime compensation for each hour worked in excess of 40 hours per week. But ironically, Congress did not define "work." Over the past several decades, the Supreme Court has toiled to define this term. In Integrity Staffing Solutions, the Court zeroed-in on Congress' unspoken understanding.

Under current standards, an activity is considered work if it is integral and indispensable to an employee's principal activity. This definition appears promising, but over the years, it has been met by limitations in practice. One might reasonably postulate that security screenings are integral and indispensable to fulfilling shipment orders for Amazon.com—after all, the screenings, at least in Integrity Staffing Solutions, were mandatory and prevented goods from being stolen. Yet, the Supreme Court found otherwise. The reason is that an activity is not integral and indispensable merely because it is required. Rather, an activity is integral and indispensable if it cannot be removed without impairing an employee's ability to perform a principal activity.

For example, if employees working in a battery plant needed to wear protective clothing, the time spent donning that protective clothing would be integral and indispensable to their principal activities. Removing that protection would impair their ability to work safely. Conversely, if the security measures in Integrity Staffing Solutions were removed, the employees could still complete their assignments unimpaired. The difference between these examples is what effect the questioned activity has on an employee's principal activity.

Knowing when an activity is considered work is a delicate analysis. While the Supreme Court has helped clarify the issues involved, employers should consult with legal counsel before determining whether certain time is compensable or non-compensable under the FLSA and applicable state wage laws.

(Acknowledgment: Thanks to Brian Bouchard for his work on this wage and hour article.)

B. Employers Cautioned about Pregnancy Discrimination but Reassured that Court Agrees EEOC Guidance Out There.

The U.S. Supreme Court recently clarified the framework that applies to certain claims for accommodations under the federal Pregnancy Discrimination Act (the "PDA"). That was the

decision on March 25th in the case *Young v. United Parcel Service, Inc*. This was a balanced decision that provided something for employers and employees. The Court explained that employees may be more likely to avoid dismissal before trial on these types of claims going forward, but it rejected the more employee-favorable interpretation of the PDA that the Equal Employment Opportunity Commission (the "EEOC") suggested in recent guidance.

In this highly anticipated decision, the High Court overturned a 4th Circuit decision, which had affirmed summary judgment for an employer in a discrimination claim under the PDA (which in 1978 amended the Civil Rights Act of 1964 to address pregnancy discrimination). The Court remanded the case to the trial court to determine whether the employer's failure to accommodate a pregnant worker with light duty assignments constituted unlawful discrimination.

UPS had a well-established light duty policy, whereby workers who incurred workers' compensation injuries would be relieved from the normal work requirement of being able to lift 70 pounds. The plaintiff, who was a UPS delivery driver, was pregnant and her doctor advised her not to lift more than 20 pounds. Because her condition wasn't as a result of a workplace injury, she was denied light duty assignments. She argued that the PDA required that she receive the same opportunity for light duty assignments as the employer gave to nonpregnant workers, regardless of whether they were accommodated due to on the job injuries, Americans with Disabilities Act ("ADA") needs, or Department of Transportation requirements.

Despite the fact that the Court did not decide the ultimate issue in the case, this case is still significant for employers who have to address pregnancy related restrictions.

First, *Young* clarified that an individual pregnant worker who seeks to prove discrimination through indirect evidence – such as through the application of a facially neutral policy – may do so through application of the *McDonnell Douglas* burden-shifting framework. Applying the *McDonnell Douglas* framework to the PDA (which is common in claims under Title VII), a pregnant worker can assert a prima facie case by showing that she sought accommodation, her employer did not accommodate her, and the employer accommodated others similarly situated in their ability or inability to work. The burden then shifts to the employer to demonstrate legitimate, nondiscriminatory reasons for refusing to accommodate the pregnant worker. Here, the Court explained that an employer will not satisfy its burden simply by claiming that it is "more expensive or less convenient" to add pregnant workers to the category of those whom the employer accommodates. If the employer offers legitimate, nondiscriminatory reasons for its refusal to accommodate the pregnant worker, the pregnant worker may in turn show that those reasons are merely pretext for intentional discrimination.

Because UPS accommodated "at least some" nonpregnant workers who were similar to the plaintiff in their inability to work, the Court found that a genuine issue of material fact existed on the issue of pretext and, as such, summary judgment for the employer was not warranted.

The Court, however, rejected the plaintiff's employee-friendly interpretation of the second clause of the PDA. The second clause of the PDA states, "[W]omen affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes … as other persons not affected but similar in their ability to

work." The plaintiff argued that so long as an employer accommodates *any* subset of workers with nonpregnancy-related disability conditions, pregnant workers who are similar in their inability to work *must* receive the same treatment even if still other nonpregnant workers do not receive accommodations. According to the Court, the plaintiff's interpretation would inappropriately grant pregnant workers "most-favored-nation" status in the workforce, which would be contrary to Congress' intention when the PDA was established.

Finally, the Court provided employers with some good news by severely limiting the impact of the EEOC's controversial July 2014 PDA guidance. The Court faulted the guidance for its inconsistency with prior agency interpretations and a lack of thoroughness in its analysis. That was a welcomed message to many employers who were confounded by parts of the EEOC guidance.

The Court noted, however, that its interpretation of the PDA may have limited significance due to the 2008 amendments to the ADA, which occurred after the time of the plaintiff's pregnancy in the *Young* case. In those amendments, Congress expanded the definition of "disability" to include impairments that substantially limit an individual's ability to lift, stand, or bend. Accordingly, a pregnant worker who is denied a light duty accommodation would likely be able to pursue claims under both the PDA and the amended ADA.

Employers are advised to re-examine their light duty policies as well as their accommodation and reinstatement policies to be sure they conform to the PDA, the ADA, the FMLA and applicable state laws.

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