Selected Labor & Employment Law Updates

Compiled by Updates Editor

This section of the *Journal* provides notes on recent cases, pending or newly-enacted legislation, and other current legal materials. The Updates section is designed to aid the practitioner in relating the *Journal* articles to the daily practice of labor and employment law.

Supreme Court holds that determination of whether an individual's physical or mental impairment substantially limits major life activity, so as to satisfy the Americans with Disabilities Act's definition of "disability", must take into consideration medication or other corrective devices that mitigate that individual's impairment. Sutton v. United Air Lines Inc., 119 S.Ct. 1752 (1999); *Murphy v. United Parcel Serv. Inc.*, 119 S.Ct. 2133 (1999).

In a pair of opinions by Justice Sandra Day O'Connor, the Supreme Court decided by a vote of 7-2 that evaluating people in their uncorrected state "is an impermissible interpretation" of the Americans with Disabilities Act ("ADA"). In so ruling, the Supreme Court rejected the position taken by two federal agencies and eight of the nine federal courts of appeals that have addressed the issue.

In *Sutton*, the lead opinion, the Supreme Court said that "looking at the Act as a whole, it is apparent that if a person is taking measures to correct for, or mitigate, a physical or mental impairment, the effects of those measures—both positive and negative—must be taken into account when judging whether that person is 'substantially limited' in a major life activity and thus 'disabled' under the Act." Following this line of reasoning, the Court concluded that two nearsighted pilots, whose vision is normal when wearing corrective lenses, are not disabled for ADA purposes. The pilots, twin sisters, alleged that United Air Lines discriminated against them because of their myopia. United denied them employment because their uncorrected vision did not meet the airline's requirement of 20/100 vision or better.

In reaching its decision, the Court focused solely on statutory language. The ADA defines "disability" as "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." 42 U.S.C. § 12102(2) (1994). The Court said that because Section 12102(2)(A) uses the phrase "substantially limits" in the present indicative verb form, "we think the language is properly read as requiring that a person be presently—not potentially or hypothetically—substantively limited in order to demonstrate a disability."

Supreme Court holds that plaintiffs suing under Title VII of the Civil Rights Act of 1964 need not show egregious or outrageous discriminatory conduct to be entitled to punitive damages, but only that the employer knew that its actions might be in violation of federal law. Kolstad v. American Dental Ass'n, 119 S.Ct. 2118 (1999).

In June, the Supreme Court held that punitive damages may be awarded in cases under Title VII of the 1964 Civil Rights Act ("Title VII") based solely on the employer's state of mind. There is no additional duty to demonstrate that the employer engaged in "egregious" misconduct. The Court held further, however, that employers may not be held vicariously liable for punitive damages based on managerial employees' actions if employers have made good faith efforts to comply with Title VII.

The Court's opinion by Justice Sandra Day O'Connor settled a circuit split on the standard of conduct needed for punitive damages. The vote on that issues was 7-2, while the issue of vicarious liability was decided by a narrower margin of 5-4.

The Supreme Court noted that the provision of the 1991 Civil Rights Act that made punitive damages available in Title VII suits limits punitive damage awards to cases of "intentional discrimination." Eligibility for punitive damages is further qualified by requiring that the employer must have acted "with malice or with reckless indifference to the federally protected rights of an aggrieved individual." The Court held that this standard addresses the defendant's state of mind, rather than the degree of his misconduct. While "egregious or outrageous acts may serve as evidence supporting an inference of the requisite 'evil motive,'" such acts need not be shown "independent of the employer's state of mind."

The Supreme Court holds that application for, or receipt of, benefits under the Social Security Disability Insurance program ("SSDI") neither estops action under the Americans with Disabilities Act ("ADA") nor erects a strong presumption against the ADA claim. Cleveland v. Policy Management Sys. Corp., 119 S.Ct. 1597 (1999).

The SSDI program provides benefits to persons who are "unable" to do their "previous work" and "cannot . . . engage in any other kind of substantial gainful work which exists in the national economy." In May, the Supreme Court held that a person who applies for or receives SSDI benefits is not automatically barred from suing an employer under the ADA based on a claim that the applicant or recipient could perform essential functions of his or her prior job with reasonable accommodation. The decision unanimously settled a circuit split on the issue.

The Court further held that the application for, or receipt of, SSDI benefits does not erect a strong presumption against the ADA claim. The Court did make clear, however, that in order to block a summary judgement motion to dismiss an ADA suit the applicant or recipient must explain how the SSDI claim is consistent with the ADA claim.

The Court stated that despite the apparent conflict between the statutory language of the Social Security Act and the ADA, claims made simultaneously under each Act "do not inherently conflict to the point where courts should apply a special negative presumption." The ADA defines a qualified individual to include a disabled person who can perform the essential functions of a job "with reasonable accommodation." In contrast, the Court pointed out, when the Social Security Administration determines whether an individual is disabled for purposes of the SSDI program, it does not take the possibility of reasonable accommodation into account. An applicant for SSDI benefits need not even refer to the possibility of reasonable accommodation. Therefore, an ADA suit claiming that the plaintiff can perform the job with reasonable accommodation may prove to be consistent with an SSDI claim that the plaintiff could not do his or her own job or any other job without reasonable accommodation.

The Sixth Circuit Court of Appeals holds that an employee's execution of an agreement to arbitrate statutory employment discrimination claims does not bar the Equal Employment Opportunity Commission ("EEOC") from suing for monetary and injunctive relief on that employee's behalf. EEOC v. Frank's Nursery & Crafts Inc., 177 F.3d 448 (6th Cir. 1999).

The U.S. Court of Appeals for the Sixth Circuit held that the EEOC may sue for monetary and injunctive relief on behalf of an employee who agreed to arbitrate statutory discrimination claims.

According to the court, Congress gave the EEOC "the right to represent an interest broader than that of a particular individual when it exercises its authority to sue" under Title VII of the 1964 Civil Rights Act. The court held that "to empower a private individual to take away this congressional mandate, by entering into arbitration agreements or other contractual arrangements, would grant that individual the ability to govern whether and when the EEOC may protect the public interest and further our national initiative against employment discrimination, and to thereby undo the work of Congress in its 1972 amendments."

The majority opinion states that "while the EEOC acts, in some respects, as the representative of an aggrieved individual when it sues on that individual's behalf, the EEOC never ceases to represent the public interest as well." The court also stated that the public interest outweighs the interest in enforcing the employee's private promise to arbitrate against his employer. The Sixth Circuit disagreed with the Second Circuit on this issue.

The Third Circuit Court of Appeals holds that there is no presumption that workers' life and medical insurance benefits continue for life, thereby declining to follow the "Yard-Man" inference. International Union v. Skinner Engine Co., 1999 WL 596345 (3d Cir. Aug. 10, 1999).

The U.S. Court of Appeals for the Third Circuit held that there is no presumption that collectively-bargained life and medical insurance benefits are vested. The Court declined to follow the "Yard-Man" inference which creates a presumption that parties to a collective bargaining agreement intend retired workers' welfare benefits to continue for life. This doctrine originated in the 6th Circuit and was adopted by the 1st, 4th and 11th Circuits. The court joined the 5th and 8th Circuits in declining to adopt the presumption.

The court stated in it's opinion that a "presumption of lifetime benefits [does not exist] in the context of employee welfare benefits." The Court looked to ERISA's elaborate vesting requirements for pension plans and pointed out that "it does not require automatic vesting of welfare benefit plans." There are no vesting requirements for employee welfare plans "because Congress determined that to require the vesting of those ancillary benefits would seriously complicate the administration and increase the cost of plans whose primary function is to provide retirement income."

Additionally, the court found that the employer was not liable for breaching its statutorily-imposed fiduciary duty. Contrary to the retirees' argument, the employer did not have an affirmative duty of disclosure which would require it to inform its employees that their welfare benefits were not vested. Although the employer knew that the retirees believed that their benefits were vested, because the employer did not (1) affirmatively make representations to the effect that retiree benefits were vested, (2) stand silent when specifically asked about the duration of retiree benefits, or (3) create the misimpression in the minds of the retirees; the employer was under no obligation to correct the employees' mistaken belief.