



EMPLOYER BULLETIN: DO YOU HAVE A DIFFICULT EMPLOYEE?

Kotz, Sangster often receives calls from clients asking whether they can fire or discipline an employee who is within a protected class. Clients are well aware that this could expose them to potential (even if baseless) litigation. Recently, the Sixth Circuit Court of Appeals (which covers Michigan), addressed whether employers can take adverse actions against difficult employees even when they fall within a protected class.

FACTS

In *Viergutz v. Lucent Technologies, Inc.*, Lucent Technologies, Inc. (“Lucent”), Mr. Viergutz began working as an installer in 1997. At the time, he was forty-three years old. In December 2002, Lucent reduced its workforce, and Viergutz was selected for layoff. While employed at Lucent, Viergutz had, by his own account, numerous interpersonal conflicts with his peers.

Three years later, Viergutz responded to Lucent’s advertisement seeking to hire an installer. Viergutz’s application was forwarded to the hiring manager who decided not to interview him because she knew from other managers that Viergutz had a poor reputation and he was over qualified for the position. The hiring manager specifically advised human resources that Viergutz “would not be a good candidate for this job” because he had “a bad reputation” and that it was “not in Lucent’s best interest to hire [Viergutz] for the job.” An individual with a background in general laborer work, who met the skill set necessary for the job, and who was under 40, was subsequently hired for the job.

Viergutz filed a charge of age discrimination with the EEOC regarding being overlooked for the installer position. The EEOC dismissed the charge without finding discrimination. Viergutz then filed a Civil Complaint alleging age discrimination arising out of Lucent’s failure to hire him for the 2005 position and a claim for “harassment/defamation of character” based on events which occurred during employment. The federal court granted Lucent’s motion to dismiss the case. Viergutz appealed the dismissal decision to the Sixth Circuit Court of Appeals.

The Sixth Circuit held Viergutz had initially established his burden of establishing age discrimination. In response thereto, Lucent submitted an affidavit of the hiring manager that stated Viergutz was not hired due to his poor reputation. Viergutz was unable to demonstrate that this proffered reason was a pretext for discrimination. Viergutz was also unable to show his superior skills make him more qualified for the job because his superior skills were not needed for the job. Further, Viergutz did not dispute that he was referred for a psychiatric evaluation after a 2000 work incident with a co-employee and his own deposition testimony admittedly chronicled numerous disputes with coworkers. The Court agreed that an inability to get along with co-workers was a sufficient basis to take adverse employment action and the dismissal was affirmed.

CONCLUSION

In determining whether to take an adverse action, employers should understand that the Court will not second guess and employer’s business judgment. Employees cannot simply show that the employer’s decision was wrong or mistaken since the factual dispute at issue is whether a discriminatory animus motivated the employer. Thus, employers should be careful to make informed and considered decisions prior to taking action and be able to produce written documentation to support adverse employment decisions. Employers can take adverse actions, even if an employee falls within a protected category, but they must be mindful to first adhere to sound business practices during the hiring and performance process.

We are experienced, proactive and aggressive legal counsel providing superior service in all areas of employment law. If you would like further information regarding the issues raised in this newsletter or any other employment related issues, please contact Heather G. Ptasznik at (313) 259-8586, John T. Below at (313) 259-8597, or Matthew S. Derby at (313) 259-8653. For more information about Kotz Sangster, please visit us at www.kotzsangster.com. This newsletter is provided as general information service and should not be construed as and does not contain legal advice on any specific matter, nor does this message create an attorney-client relationship.