



Differences in Severance Packages Can Lead to Title VII Claims

Karla Gerner went to work for Chesterfield County, Virginia (the “County”), in 1983. In 1997, she was appointed the County’s Director of Human Resources. Then, in 2009, she was informed by County officials that her position was being eliminated due to restructuring. She was asked to sign an agreement that would give her three months pay and health benefits in exchange for her voluntary resignation and waiver of any causes of action against the County. After considering the County’s offer for several days, Gerner declined, and her employment was terminated, without any severance pay or benefits.

Gerner filed a lawsuit in federal district court against the County alleging disparate treatment on the basis of sex in violation of Title VII of the Civil Rights Act of 1964. She claimed that the County did not offer her the same “sweetheart” severance package it offered to her similarly-situated male counterparts when the County sought to terminate their employment. The district court dismissed Gerner’s claim on the basis that she had failed to prove an adverse employment action, one of the four elements she had to prove to succeed on a disparate treatment claim under Title VII. The district court reasoned that the County’s offering of a less favorable severance package did not constitute an adverse employment action because the alleged adverse action had to relate to a “contractual entitlement” to be actionable and because the offer of severance was made after Gerner was terminated.

Gerner appealed her case to the United States Court of Appeals for the Fourth Circuit. The appellate court reversed the district court’s decision.

In rejecting the district court’s “contractual entitlement” argument, the appellate court discussed a number of prior Title VII cases where courts held any benefit that is “part and parcel of the employment relationship” may not be doled out in a discriminatory fashion. The court also referenced a prior United States Supreme Court opinion that stated benefits that an employer is under no obligation to furnish by any express or implied contract may provide the basis for a Title VII claim.

The appellate court also rejected the district court’s reasoning that Gerner could not bring suit for an adverse action that occurred after she was terminated. The court said Title VII makes it an unlawful employment practice for an employer to discriminate against any individual on the basis of membership in a protected class, and courts have consistently held that rule applies to potential, current, and past employees.

Gerner’s case is a good reminder that discrimination claims under Title VII can arise from actions taken that adversely impact former employees, and that discriminatory treatment based on someone’s membership in a protected class can be actionable, even if it relates to benefits that are offered by the employer without any obligation to offer them.

Overlapping Benefits: Receiving Unemployment-Compensation Benefits While Claiming Total Disability under the Workers' Compensation Act

In late 2008, Paul Clemons sued his employer White Tiger Graphics, Inc. ("White Tiger"), for workers' compensation benefits claiming he had suffered three separate injuries (one to his left knee and two to his right shoulder) while employed by White Tiger. Clemons' employment with White Tiger was terminated in late 2009. After his employment was terminated, but while his workers' compensation case was still ongoing, Clemons filed for unemployment-compensation benefits. In late 2010, the Madison County Circuit Court entered a judgment awarding Clemons permanent-total-disability benefits for his work-related injuries.

White Tiger appealed the case to the Alabama Court of Civil Appeals. On appeal, White Tiger pointed out that, in order to receive unemployment-compensation benefits, Clemons had to be "physically and mentally able to perform work of a character which he is qualified to perform by past experience or training." White Tiger contended that Clemons' assertion that he was entitled to unemployment-compensation benefits was, therefore, necessarily inconsistent with his claim in his workers' compensation case that he was permanently and totally disabled.

The appellate court rejected White Tiger's argument, and acknowledged that there can be instances where, under Alabama law, an employee is entitled to recover unemployment-compensation benefits and permanent-total-disability benefits at the same time. The court noted that total disability does not mean absolute helplessness, and would include situations where an employee is not able to work in his or her trade and is unable to obtain other reasonable work due to the employee's disability. Clemons said that he felt like he could work at the time he applied for unemployment-compensation benefits, he had looked for other employment, and he was willing to give it his best shot if he found a new job. However, he was unable to find any employment due to his disabilities.

The court stated that, even if Clemons could find work he was qualified, willing, and able to do, that would not necessarily preclude a finding that he was permanently and totally disabled, if that work was so limited in quality, dependability, or quantity that a reasonable, stable market for those services does not exist. Based on this reasoning, the court upheld the trial court's award granting Clemons permanent-total-disability benefits.

This case does not state that unemployment-compensation benefits are always recoverable at the same time someone is receiving permanent-total-disability benefits for work-related injuries, but it shows that there are situations where employers can be hit with this kind of double whammy if they terminate an employee who has work-related injuries.

Customizable Seminars and Training Sessions

The lawyers of FEES & BURGESS, P.C., combined, have many years experience working in various fields, as both in-house and private counsel, representing a diverse clientele. This wide field of knowledge enables us to provide quality training on various topics. Our programs can be customized to fit any business need while keeping the cost of our training competitive, without sacrificing quality. For more information, please contact us at seminars@feesburgess.com.

Upcoming Events

Contracting Under the UCC: A Basic Primer to Articles 1, 2, and 2A

Date: July 30 – August 1, 2012

Location: Boston, Massachusetts

Session number 318, will be July 30, 2012, from 4:00 p.m. – 5:15 p.m.

Session number 418, will be July 31, 2012, from 11:15 am – 12:30 p.m.

Session number 517, will be July 31, 2012, from 2:30 p.m. – 3:45 p.m.

Session number 617, will be July 31, 2012, from 4:00 p.m. – 5:15 p.m.

These four sessions, presented by Allen Anderson and Ryan Blount of FEES & BURGESS, P.C., and in conjunction with the [2012 NCMA World Congress](#), provide a practical introduction to the foundations of domestic commercial contracting. The classes will feature discussion of risk management in several areas key to those buying or selling under the Uniform Commercial Code (UCC), including formation of commercial agreements and determination of applicable contract terms; performance issues under those agreements or terms, including risk of loss and delivery, acceptance, repudiation, warranties, and disclaimers; and, of course, disputes, remedies, and dispute resolution.

Employment Records, Retention, Retrieval, and Destruction

Date: September 20, 2012

Location: Birmingham Marriott (3590 Grandview Parkway; Birmingham, Alabama 35243)

Time: Registration begins at 7:30 a.m.; program starts at 8:30

The stakes for recordkeeping errors have never been higher. Increasingly, juries in employment litigation weigh an employer's paper trail, both hard-copy and electronic, when deciding on an employee's claim of discrimination, harassment, retaliation, or other workplace conflict. Because jurors are generally employees themselves, they look for any reason to side with the worker. That's why employers must be prepared to produce documents and records that defend their decisions and policies.

Jeffrey Roth, Allen Anderson, and Allison Chandler in partnership with M. Lee Smith Publishers, will present Employment Records Retention, Retrieval, and Destruction, a one-day workshop on document management best practices. The event, designed for Alabama employers, HR executives, and corporate legal counsel, will be held Wednesday, September 20, 2012.

Those who choose to participate in this event will learn:

- Which documents should be kept and which are vital, how to keep a record of a workplace investigation
- Who "owns" an employee's personnel records
- Special document challenges
- How to store electronic data
- Time requirements in recordkeeping
- Proper methods of disposal

This program has been approved for 5.75 recertification credit hours through the HR Certification Institute.

For more information, including how to register, please click [here](#), or click [here](#) to contact Amy Kelly, with M. Lee Smith Publishers.

For more information on these and other programs, please visit us online at www.feesburgess.com; contact us by e-mail at seminars@feesburgess.com; or by phone at (256) 536-0095.



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“No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.”

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