



Date: September, 2006



A Compliance Check Newsletter

Court Bars Immigration Queries in Job Discrimination Case; Judge Cites ‘Chilling Effect’

EEOC Secures Ruling in Minnesota Sexual Harassment Case Against Perkins Restaurant & Bakery

The U.S. Equal Employment Opportunity Commission (EEOC) recently announced that it has secured another federal court ruling sharply limiting the ability of employers sued for harassment and other forms of employment discrimination to make an issue of the victims’ immigration status.

Judge John R. Tunheim of the U.S. District Court for the District of Minnesota wrote in the ruling, “Discovery regarding the immigration status of plaintiffs in civil rights cases is generally prohibited, especially in the early stages of litigation. First, the immigration status . . . is usually not relevant to the issue of whether the employer discriminated [and second] permitting employers to use the discovery process to inquire into worker’s immigration status would have an unacceptable chilling effect on the bringing of civil rights actions, which would result in ‘countless acts of illegal and reprehensible conduct’ going unreported.”

The decision came in a sexual harassment case being litigated by the EEOC Minneapolis Area Office captioned *EEOC v. The Restaurant Company d/b/a Perkins Restaurant and Bakery*, D. Minnesota No. 05-1656 (JRT/FLN); it was signed by the court on Friday, August 18, and received by the parties yesterday. One of the cases the court relied upon in its analysis was *EEOC v. Bice of Chicago*, 229 F.R.D. 581 (N.D. IL 2005), litigated by the agency’s Chicago District Office.

John Hendrickson, EEOC Regional Attorney for the Chicago District, which includes Minnesota, said, “The positions here are really quite simple, but they yield an important principle. The attorneys for Perkins decided a good way to defend a sexual harassment case would be to go after the victim on immigration related issues. The EEOC challenged that with the obvious proposition that a victim’s immigration status does not tell anyone anything about whether the employer is permitting sexual harassment of its employees.”

“The principle,” Hendrickson continued, “is that you don’t let lawyers pursue wildly irrelevant lines of inquiry especially when, as the court noted, the result might be to scare people away from challenging illegal conduct. A strength of our system is the resolution of difficult issues in courts of law. We do not permit parties to attempt to intimidate and scare people away from our courts by the pursuit of potentially damaging but entirely unrelated, irrelevant and immaterial information.”

Judge Tunheim wrote in his ruling, “Perkins argues that information regarding [the victim’s] immigration status is relevant and necessary to its case. The Court disagrees. [Perkins] has failed to identify any case where a federal district court permitted discovery into a Title VII plaintiff’s immigration status where the plaintiff was not seeking back pay, front pay, or reinstatement. To the contrary courts that have previously addressed the issue have not permitted defendant employers to use the discovery process to delve into the plaintiff’s immigration status . . .”

The Focus

In the case, EEOC alleges that an employee of a Perkins restaurant in St. Paul, Minn., was sexually harassed by a supervisor, and that when she complained, the company investigated her immigration status rather than the sexual harassment. The court noted that if the employee was fired because of a good faith belief that she was unable to work legally, it would not matter whether, in fact, she was undocumented, nor would that be relevant to her sex harassment claim.

EEOC Attorney Tina Burnside, who is now assigned to EEOC's Charlotte District Office, briefed and argued the discovery motions which lead to the ruling. She said, "There is no big secret about why certain defense lawyers from time to time decide to make a big issue out of immigration status. They figure that there is at least an outside chance that they can put such fear into the hearts of the victims that they will walk away. The line of inquiry has nothing to do with the merits in employment discrimination cases. It's good that the courts are seeing through it and are not permitting it."

EEOC enforces federal laws prohibiting employment discrimination. Further information about the EEOC is available on its web site at www.eeoc.gov.

EEOC Settles Sex and Race Suit Against S & Z Tool & Die

\$940,000 Settlement To Be Shared Among Class of African Americans and Women Denied Hire

The U.S. Equal Employment Opportunity Commission (EEOC) announced recently that it had resolved its lawsuit charging that S & Z Tool & Die Co. discriminated against African American and female applicants in hiring due to their race and sex.

The lawsuit was filed in September 2003 under Title VII of the 1964 Civil Rights Act and resolved by consent decree in the U.S. District Court for the Northern District of Ohio Eastern Division. The EEOC alleged that S & Z Tool & Die Company, a Cleveland-based metal manufacturing firm founded in 1943, engaged in a pattern and practice of refusing to hire female applicants for employment because of their sex, and black applicants because of their race. Molly Baron-Prodan and a class of other black and female applicants were denied hire into non-clerical entry-level positions such as laborer, or semi-skilled jobs such as machine operator.

The settlement provides \$850,000 as monetary remedy to an estimated class of at least 20 women and black applicants who sought employment since 1999. Additionally, Baron-Prodan will receive an offer of employment and \$90,000, which includes compensatory damages. Other provisions include annual EEO training to all supervisory and management employees and human resource employees, and the appointment of an EEO Coordinator.

The EEOC is responsible for enforcing the federal laws prohibiting employment discrimination based on race, color, religion, sex, national origin, age, disability and retaliation. Further information about the EEOC is available on its web site at www.eeoc.gov.