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A Compliance Check Newsletter

Court of Appeals Rules Target Must Face Trial on Race Discrimination Charges

EEOC Presented Evidence That Retail Giant Failed to Hire Four African Americans in Milwaukee Stores Because of Race

The U.S. Court of Appeals for the Seventh Circuit in Chicago has reversed a lower federal court in Milwaukee and ruled that a U.S. Equal Employment Opportunity Commission (EEOC) race discrimination suit against the giant retailer Target Corporation should go to trial. The appeals court found that the EEOC had presented sufficient evidence -- that Target refused to hire four African American applicants for entry-level management positions because of their race -- to require a full trial. The court also held that a trial was required on the issue of whether Target had destroyed employment applications in bad faith, and whether its changed policies with respect to retaining records were sufficient.

“We find,” the court wrote, “that the EEOC did present sufficient evidence to establish a genuine issue of material fact as to whether Target’s reason for not interviewing [the African-American applicants] was a pretext for race discrimination.”

“EEOC has long been convinced that the evidence we were placing of record in this case was more than enough to require that the victims of Target’s alleged discrimination be afforded their day in court — their day in front of a jury,” said John Hendrickson, EEOC regional attorney for the Chicago District, which now includes Milwaukee. “Thanks to this important decision from the Court of Appeals, that day is now going to come, and we are very encouraged and pleased by that.”

Dennis McBride, the trial attorney in the EEOC’s Milwaukee Area Office who has led the government litigation effort, said, “This seems to us to be a classic case illustrating the negative impact that race still may have upon the search for work even at leading big-name employers who are marketing to millions of African Americans. The EEOC’s allegations include, for example, that Target had recruited for entry-level management positions at multi-cultural college job fairs, but then failed to consider African American applicants because of their race. That’s at the heart of what this case is about and why we are in it.”

EEOC associate regional attorney in the Chicago District Jean Kamp noted, “One of the most significant evidentiary points here arose from the fact that one of the African American applicants included in the EEOC’s suit seemed to be well on the way to landing a job at Target, until the store realized from her name and voice that she was

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likely to be black — and then the job disappeared. So the Court of Appeals' ruling that the EEOC may utilize expert evidence at trial to the effect that employers may discriminate based on African-American names or accents during telephone conversations is very important."

Stillwater School District to Pay \$1.12 MILLION for Age Bias Against Class of Retired Employees

Latest EEOC Settlement on Issue of Discriminatory Early-Retirement Plans

Independent School District No. 834 of Stillwater, Minnesota (Stillwater School District), will pay more than \$1 million to former school district employees under a consent judgment resolving an age bias lawsuit brought by the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency announced today.

EEOC has brought a total of 12 age discrimination lawsuits against Minnesota school districts because of their discriminatory early retirement plans. All of the lawsuits have now settled for total monetary relief of over \$2.6 million for more than 200 retired teachers and other employees. In the case against the Stillwater School District, the EEOC filed suit on December 15, 2005, (EEOC v. Independent School District No. 834 of Stillwater, Minnesota, Civil No. 05-2908) on behalf of a class of more than 50 former school district employees whose early retirement incentive payments were reduced because of their age. EEOC charged that the Stillwater School District reduced the amount of the early retirement incentive payment for each year as the employee grew older. The EEOC contended that the Stillwater School District violated the Age Discrimination in Employment Act by paying the retiring employees less as they aged.

The five-year consent judgment, entered August 18, 2006, by U.S. District Judge Richard H. Kyle of the District of Minnesota in St. Paul, provides \$1,120,430 in monetary relief for 57 former employees and enjoins the Stillwater School District from implementing or administering a retirement incentive plan that reduces the benefits based upon the age of the retiree. It further requires that the Stillwater School District report all revisions to its early retirement incentive plans to the EEOC and to post a notice regarding the settlement.

U.S. Labor Department Sues Houston Drywall Firm to Recover over \$500,000 in Back Wages for Employees Working on Mississippi Gulf Coast

The U.S. Department of Labor (DOL) has sued Benitez Drywall LLC, a Houston-based drywall company, and its owners for alleged violations of the overtime and recordkeeping provisions of the federal Fair Labor Standards Act (FLSA). The complaint was filed in U.S. District Court for the Southern District of Texas, Houston Division following an investigation by the department's Wage and Hour Division (WHD). Back wages are expected to exceed \$500,000 for more than 500 construction workers. Also

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named in the department's lawsuit are Ruben Benitez, president of the company and Hoguer Benitez, vice president.

"To protect workers engaged in hurricane recovery and rebuilding, last year the department deployed additional investigators to the Gulf Coast region to better ensure that employers fully comply with wage and hour laws," said Secretary of Labor Elaine L. Chao. "This legal action is among our many efforts on behalf of these workers who are doing vital work for the Gulf Coast region's recovery and who deserve and are entitled to receive all the wages they have earned."

Benitez Drywall performed on contracts for reconstruction along the Mississippi Gulf Coast. The WHD investigation of the Beau Rivage Hotel and Casino contract in Biloxi, Miss. and other worksites, found that Benitez regularly misclassified employees as independent contractors and failed to pay them the additional half time overtime premium for hours worked over 40 in a workweek. The company also failed to maintain accurate records of employees' wages and hours of work.

The FLSA requires that covered employees be paid at one and one-half times their regular rate of pay for hours worked more than 40 per week. The law also requires that accurate records of employees' wages, hours and other conditions of employment be maintained. For purposes of the FLSA, there are a number of factors for determining whether an individual is an independent contractor or an employee. In this case, WHD found that company's workers did not meet the legal factors for independent contractor status.

The Labor Department lawsuit asks the court to permanently enjoin the defendants from future violations of the law and to order them to pay employees overtime back wages due, along with an equal amount in liquidated damages and prejudgment interest.