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GOOD HUMAN RESOURCES PRACTICES: REVISITING THE FUNDAMENTALS

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Employers are increasingly asked to manage a myriad of complex human resources problems. However, two recent court decisions provide an excellent reminder that litigation often arises from an employer's failure to follow fundamental human resources practices. The purpose of this article to remind employers to regularly take time to revisit the fundamentals of good human resources management.

Leaving Decision-Makers in Ignorance of the Basic Features of Employment Discrimination Laws is an "Extraordinary Mistake"

In May of 1996 Anthony Mathis, a 59-year-old male, applied for a sales position with Phillips Chevrolet, Inc ("Phillips"). Despite 24 years of vehicle sales experience, Phillips did not interview Mathis and opted, instead, to hire seven younger salespeople. Mathis sued Phillips claiming, in part, that Phillips had violated the Age Discrimination in Employment Act ("ADEA") which prohibits employment discrimination against persons who are 40 years old or older.

Following a three day trial, the jury found that Phillips had violated the ADEA and awarded Mathis \$50,000 in compensatory damages. The jury also found that Phillips' willfully violated the ADEA. For that reason the trial court ordered Phillips to pay an additional \$50,000 in liquidated damages as further penalty. As part of its appeal, Phillips contended that there was insufficient evidence to support the jury's determination that the violation was willful and, therefore, liquidated damages should not have been assessed.

The United States Court of Appeals for the Seventh Circuit disagreed. Under the ADEA, courts assess liquidated damages in the same amount as compensatory damages if the employer's violation of the statute is "willful." A violation is considered "willful" if the employer "knew or showed reckless disregard for the matter of whether its conduct was prohibited by the ADEA." A reckless mistake includes one where the employer demonstrated indifference as to whether its conduct violated the ADEA.

In the Mathis case, Phillips' general manager testified that he was the person with ultimate hiring authority at the dealership. The general manager also testified that he often noted the ages of employment applicants by hand on their application form. In addition, the general manager testified that he was not aware that it was illegal to consider age when making hiring decisions. Based on this evidence, the court upheld the liquidated damages award. In reaching the holding, the court stated that "leaving managers with hiring authority in ignorance of the basic features of the discrimination laws is an 'extraordinary mistake' for a company to make, and a jury can find that such an extraordinary mistake amounts to reckless indifference." Anthony C. Mathis v. Phillips Chevrolet, Inc., 269 F.3d 771 (7th Cir. 2001).

Inconsistent Application of Company Policy Is Damaging Evidence of Unlawful Employment Discrimination

Sylvia Curry ("Curry"), an African-American female, was employed as a cashier at a Menard store in Skokie Illinois. Curry filed a race discrimination suit under Title VII of the Civil Rights Act of 1964 against Menard Inc. after her employment was terminated for violation of the store's unwritten policy on cash drawer discrepancies. The store's unwritten policy was described as the following:

"Every day the cash in each cashier's register would be counted and compared against a master computer printout. The first time a cashier's register count differed from the printout by \$3.00 or more, the cashier would receive a written warning. If another discrepancy occurred within 30 days of receipt of the written warning, the cashier would be suspended. A third discrepancy occurring within 60 days from the suspension would result in termination."

Curry had admitted that her register had cash discrepancies of more than \$3.00 on January 4, 1998, February 9, 1998 and February 28, 1998. It seemed quite clear to Menard that under the terms of the unwritten policy Curry's employment should be terminated.

But there was a problem with Menard's position. During Curry's employment, one of Curry's co-workers had two cash discrepancies within the time period created by the unwritten policy. Another of Curry's co-workers had three cash discrepancies within the time created by the unwritten policy. Neither co-worker was suspended or terminated as required under the unwritten policy. Neither co-worker was African-American.

The trial court decided a pretrial motion of summary judgment in favor of Menard. The federal appeals court vacated the judgment of the trial court and remanded the case for further proceedings.

Although Curry had offered no direct evidence of discrimination, the Court of Appeals held that the inconsistent application of the unwritten policy created a genuine issue of material fact as to whether Menard's stated reason for terminating Curry's employment was actually a pretext for discrimination. In other words, Curry's showing that similarly situated employees belonging to a different racial group received more favorable treatment served as evidence that the employer's explanation for the adverse job action was a pretext for racial discrimination. Sylvia Curry v. Menard, Inc., 270 F.3d 473 (7th Cir. 2001).

Reminder to Re-Focus on the Fundamentals

These decisions do not represent new developments in the law or even novel applications of existing law. The decisions do however act as a reminder of the need to regularly revisit the fundamentals of human resources management. Of all the lessons that can be learned from the decisions, there are three lessons that are particularly helpful.

First, an employer must regularly and comprehensively train its decision-makers regarding fundamental employment discrimination law. This training should also include instruction on company policy/work rules and the decision-maker's role in the company disciplinary process.

The second lesson learned from the decisions is that inconsistency in the application of company policy can create a significant obstacle for the employer in litigation. The inference of discrimination is raised in those circumstances where similarly situated employees are not treated similarly. In litigation, once the inference of discrimination is raised the burden of proof and burden of persuasion shifts to the employer to articulate a legitimate, non-discriminatory business reason for its decision.

Finally, both of the above cases may have been avoided had the employers created internal processes and/or procedures that provided guidance to the decision-maker. For example, had the Menard's store policy regarding cash shortages been a formal, written policy rather than an unwritten policy, perhaps the store's enforcement of the policy would have been more consistent. Similarly, had Phillips Chevrolet, Inc. promulgated a formal recruitment policy, it is likely that the general manager would have better understood his role in the hiring process.

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