**RASHRM**

**EMPLOYMENT LAW UPDATE**

**MAY 2014**

**DISCRIMINATION**

Federal Circuit Courts

*Baker v. Macon Resources, Inc.*, No. 13-3324 (7th Circuit April 25, 2014)

***Facts***: Plaintiff worked for an organization providing care to persons with disabilities. The organization had a policy that anyone who “witnessed, was told of, or has reason to believe” of an incident of abuse must report the allegation. Plaintiff observed a co-worker “flick” a resident in the neck. Several years later, the co-worker was accused of sexually abusing the same resident. During the investigation into sexual abuse, the “flicking” episode was discovered. Plaintiff was subsequently fired for violating the reporting policy. Another employee that had witnessed abuse and failed to report it was given a 3-day suspension.

***Summary***: Plaintiff brought an age discrimination charge. In analyzing the claim, it was Plaintiff’s burden to produce adequate evidence that a “comparable worker” who engaged in similar misconduct received a lighter treatment. The “comparative conduct” is an objective standard. Moreover, the trier of fact may reasonably infer pretext from flagrant inaccuracies or inconsistencies in an employer’s proffered reason for the employment decision. Also, selective enforcement or investigation of a disciplinary policy can also show pretext..

*Gosey v. Aurora Medical Center*, No. 13-3375 (7th Circuit April 11, 2014)

***Facts:*** Plaintiff, a black female, was an employee of the defendant’s food service department. She applied for an open position as food-services manager and did not receive the promotion. Several months later, she filed a race discrimination charge on the basis of the denied promotion and also for retaliation. She contended that after applying for the position, her employer started disciplining her for sham infractions and assigning extra duties. She also accused management of trying to manufacture a reason to fire her, including that she was continuously tardy.

***Summary:*** Since Plaintiff produced no evidence in support of her claim of race discrimination in the promotion process, that claim was denied. Plaintiff did not produce any evidence that the successful candidate did not have superior qualifications. However, the Court denied summary judgment on the retaliation claim because the employer could not substantiate the claim that Plaintiff was excessively tardy. The Court specifically found that where the documentation submitted by the employer did not substantiate the claimed legitimate business interest of the employer, the trier of fact could infer a discriminatory basis for the decision.

**PUBLIC PENSIONS**

Illinois Appellate Courts

*Pedersen v. Village of Hoffman Estates*, 2014 Ill.App. (1st) 123402 (March 31, 2014)

***Facts:***Pursuant to the Public Safety Employees Benefits Act (PSEBA), as it relates to this case, a firefighter who receives a line-of-duty disability is entitled to have his and his dependents’ health insurance premiums continuously paid by the village provided the firefighter suffered a catastrophic injury in response to what the firefighter reasonably believed to be an emergency. 820 ILCS 320/10.

The plaintiffs in this case are a former firefighter for the village, which is a home rule unit, and his wife. The firefighter was terminated because he was disabled and unable to perform the duties of a full-time firefighter due to hearing loss. The firefighter was awarded a line-of-duty disability, but he was denied PSEBA benefits following a hearing pursuant to the village’s administrative procedures. The hearing officer (the village manager) found that the medical evidence failed to suggest that the firefighter’s disability was duty-related and that his disability resulted from responding to what the firefighter could reasonably believe to be an emergency.

The facts surrounding his disability are pertinent. Both prior to and during his employment with the village as a firefighter (from 1966 to 2005), the firefighter was continuously exposed to loud, industrial noise, which resulted in continuous hearing loss. In 2004, the firefighter and others responded to a call regarding a tanker truck fire on an Illinois toll road. After the fire was extinguished, a coworker accidently activated the fire truck’s siren while the firefighter was standing only two feet away. It was this incident that ended the firefighter’s career as a firefighter due to hearing loss.

***Summary*** Many issues were raised in this case. The biggest issue facing Illinois municipalities, however, was the procedural issue. The plaintiffs argued that the village’s ordinance crating the administrative procedure for determining PSEBA claims violated, among other things, Section 20 of the Act. The Act fails to provide any guidance on the proper procedure to seeking benefits under the Act, and Section 20 of the Act precludes a home rule unit from providing benefits to persons covered under the Act in a manner inconsistent with the requirements of the Act. According to the plaintiffs, pursuant to the Illinois Supreme Court’s ruling in *Gaffney v. Board of Trustees*, 2012 IL 110012, Section 20 of the Act prohibited the village, even as a home rule unit, from establishing an administrative procedure for determining benefits under the Act.

On this issue, the Illinois Supreme Court specifically ruled in *Gaffney* that a fire protection district does not have the statutory authority under the Fire Protection District Act to make administrative decisions on employees' eligibility for Section 10 PSEBA benefits. The determination of eligibility for the statutory benefit under PSEBA is not subject to a fire protection district's authority under the Fire Protection District Act to manage and control its group insurance program.

Both the circuit court and the appellate court in the present matter noted that the village, unlike the fire protection district in *Gaffney,* is a home rule unit. Under Illinois law, a home rule unit may operate concurrently with the state if the legislature does not expressly limit or deny home rule authority. Furthermore, the sovereign powers of home rule units extend to the creation of administrative agencies and procedures.

Under this backdrop, both courts determined that Section 20 does not specifically limit or define the procedures a home rule unit may adopt for determining claims brought under the Act; it only prohibits a home rule unit from acting in a manner inconsistent with the requirements of the Act. In addition, Section 20 does not expressly limit or deny the sovereign powers of home rule units to create administrative agencies and procedures for determining the eligibility for benefits under the Act. Therefore, the courts ruled that the village, as a home rule unit, was not prohibited by Section 20 of PSEBA from establishing administrative procedures to examine claims brought under the Act.

The plaintiffs also maintained that the PSEBA hearing violated the rule of collateral estoppel because the issues addressed in the PSEBA hearing had already been litigated before the pension board in determining his eligibility for a line-of-duty pension. Specifically, the plaintiffs argued that collateral estoppel applied in this case because the pension board had already determined the firefighter was responding to an emergency when he was injured. The courts determined, however, that the plaintiffs failed to substantiate the elements of collateral estoppel because they failed to present evidence that the parties in each action (the pension board and the village, respectively) were in privity with each other.

The appellate court, however, determined that the village manager's decision to deny PSEBA benefits in this case was clearly erroneous. The Illinois Supreme Court ruled in *Gaffney* that a firefighter does reasonably believe to be responding to an emergency for PSEBA purposes when an unforeseen circumstance occurs that involves imminent danger to a person or property requiring an urgent response, even if the circumstance occurs during routine operations. According to the appellate court in the present case, the facts involving the firefighter's disability falls within the scope of a response reasonably believed to be an emergency. Therefore, the appellate court reversed the village’s denial of PSEBA benefits and the circuit court’s affirmation of that denial.

**FAIR LABOR STANDARDS ACT**

Federal Circuit Courts

*Haro v. City of Los Angeles,* Nos. 12-55062, 12-55310 (9th Cir. March 18, 2014)

***Facts:*** The plaintiffs in this case were dispatchers and aeromedical technicians for the city's fire department who were denied standard overtime pay because the city classified them as employees "engaged in fire protection," as defined in the FLSA. The plaintiffs challenged the city's designation and sought to be paid three years of back-pay for their overtime hours, claiming the city willfully violated the Act, and they were entitled to mandatory liquidated damages (double damages) because of the city's lack of good faith or reasonableness in complying with the Act.

***Summary:*** Under the FLSA, Section 207(k) exempts employees "engaged in fire protection" from standard overtime pay. Section 203(y) defines "employee in fire protection" as an employee who: (1) is trained in fire suppression; (2) has the legal authority and responsibility to engage in fire suppression; (3) is employed by a fire department; and (4) is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk. The firefighters who meet this definition receive overtime only after working 212 hours or more in a 28-day period. Those who do not, are to receive the standard overtime pay.

Typically, if these overtime provisions are violated, an employee may recover up to two years of back overtime pay. But, an employee may recover up to three years of back overtime pay when it's shown that the city willfully violated the Act. Furthermore, the employee may be entitled to liquidated damages when it's shown that the city lacked good faith or reasonableness in complying with the Act.

In the city's fire department, although dispatchers are to have previously worked as a firefighter or paramedic, they are not now required to have any fire gear, handle fire equipment, or work at a fire scene. Aeromedical technicians work out of air ambulances and mostly provide medical assistance. Although they must have experience as firefighters and paramedics, they are not outfitted with the same gear used by firefighters and they do not now suppress fires.

The district court granted the plaintiffs' motions for summary judgment, and the Ninth Circuit affirmed. The courts determined that the dispatchers and aeromedical technicians were not exempt from standard overtime pay because they did not have the legal authority and responsibility to engage in fire suppression under §§ 207(k) and 203(y). The courts also determined that the three-year statute of limitations applied because the evidence showed that the city had disregarded the FLSA by failing to inquire about uncertain coverage issues, especially after its involvement in a similar matter. Finally, the courts determined that the plaintiffs were entitled to liquidated damages because the city's willful violation of the Act established the city's lack of good faith or reasonableness in complying with the Act.

*Mitchell v. JCG Industries, Inc.*, No. 13-2115 (7th Cit. March 18, 2014)

***Facts:*** Plaintiffs are line workers in a poultry processing plant. As a part of their work assignment, they are required to comply with stringent sanitation requirements before beginning work at the commencement of their shift, as well as at the beginning and end of their lunch break. The issue in the case was whether this “changing” time was compensable work time under the Fair Labor Standards Act and the Illinois Minimum Wage Law. The employer considered “changing” time as a part of the bona fide meal break and, as such, non-compensable. The employees, however, contended that it should be considered compensable at 1.5 times regular pay because “changing” time caused each employee to exceed the 40-hour work week.

***Summary:*** There was no dispute that the employees collective bargaining agreement provided that the employee’s meal break was not compensable. Additionally, the FLSA excludes from compensable time any time at the beginning or end of each work day where the employee is changing clothes. Although the FLSA does not exempt “changing” time during lunch breaks, it does not require compensation during meal breaks. Since the “changing” time was a deminimus portion of the meal break, it was deemed non-compensable under the FLSA.

The Illinois Minimum Wage Law required a different analysis. First, the Court recognized that the FLSA did not preempt state law if the state law was more generous to the employees. While the Illinois Minimum Wage Act does not require meal periods to be compensable, “hours worked” is defined to mean all time an employee is required to be on duty or on work premises. Moreover, the regulations provide that an employee’s meal period is compensable when such time is spent predominantly for the benefit of the employer rather than the employee. Here, the Court found that the meal break was for the benefit of the employee and nothing prevented the employees to leave the premises (although the changing of clothes had to take place on premises). The Court found the clothes changing time to be “incidental” to the meal period and, as such, non-compensable.

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