

Your Monthly Legal Update – January 2007

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WISCONSIN CASES TO ASSIST IN HUMAN RESOURCE PRACTICES

Well, Happy New Year to everyone!! Hope everyone has recovered from the holiday season. This month I will summarize two recent Wisconsin cases to assist you in your Human Resource practice.

The first is a 7th Circuit Court of Appeals decision, Case No. 05-4053 *Merillat v. Metal Spinners, Inc.* (full text available at www.ca7.uscourts.gov.) This case dealt with an Equal Pay Act issue. Here, one employee had a bachelor's degree and greater experience than the plaintiff, who only had one year of post-high school education and who alleged a violation of the Equal Pay Act. In this case, the Court of Appeals determined that Summary Judgment was appropriate for the employer.

Just for a refresher, the four statutory defenses that the Court reviewed in *Merillat* relevant to a rate of pay dispute are: (i) whether the pay difference was due to a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any factor other than sex. (citing to 29 U.S.C., sex. 206(d)(1). In this case the employer argued the fourth prong, that the difference in pay was not related to sex but based upon the difference between the educational background and industry-related experience. The court upheld this logic. A bachelor's degree in business administration was of a higher educational background than a one year legal secretary degree. Further, the male in this case had previous experience in the industry, had previously overseen two other purchasing departments and had experience implementing computer systems in metals purchasing. The Plaintiff had not worked in the metal industry prior to hire with Merillat. This record revealed real differences in education and experience that upheld the company's position against these claims.

Another case of interest from the 7th Circuit of Appeals is Case No. 05-3258 *Timmons v. GM Corporation*. In this case, GM employed an employee with multiple sclerosis. This employee's condition worsened to the point where there were tangible facts that the employer could prove that this employee was not able to perform his position. The employer offered the employee transfers to other positions in an attempt to reasonably accommodate this disability but the employee refused. Ultimately, when an issue evolved regarding the employee's ability to drive safely (driving was an essential function of this position), the employer put the employee out on paid disability leave and the employee filed a complaint of discrimination against the employer.

In *Timmons*, GM had evidence that the Plaintiff was not at work and in the field when he was required to be. They also had evidence that he had not returned phone calls to customers, skipped required meetings, and had his assistant doing some of his job duties. The Plaintiff disputed whether or not his assistant assumed his duties and whether he returned the calls but he did not challenge his absence from the field and/or the skipped meetings. This Plaintiff,

according to the Court, could not establish that at the time he was placed on paid leave, that he was meeting the reasonable expectations of his employer. GM was able to establish undisputed evidence that there were legitimate concerns regarding the employee's ability to drive safely. GM had received several reports about Plaintiff's driving too slowly on highways and of his assistant being asked to drive him because he was uncomfortable driving. The Plaintiff could not challenge these reports and concerns raised by GM.

In this case the Court found that GM reasonably requested medical information regarding the plaintiff's fitness to perform his job that required significant driving. When the plaintiff refused to cooperate with the production of this information, GM then asked the plaintiff to submit to a medical examination and the court found this action to be reasonable also. Ultimately this physician determined that the Plaintiff could not physically drive and GM had the reasonable authority to rely on this medical opinion. Ultimately, this case was dismissed regarding GM's ability to put this employee out on paid medical leave.

This case sheds some light on the difficulties that employers face with employees who are going through the rigors of a chronic disability. This employee, who had a sterling former track record with this employer, clearly wanted to hang on to the normality of life for as long as possible. However, it is also clear that an employer has the ability to reasonably take action when such a physical deterioration evolves into a safety risk so long as the employer makes reasonable accommodations.