RECENT EMPLOYMENT LAW CASES OF INTEREST
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Timing of Pay Discrimination Claims

Ledbetter v. Goodyear Tire & Rubber Co., Inc., No. 05-1074 (U.S. May 28, 2007).
At issue is when pay discrimination claim accrues. Ledbetter's claim was that through the course of her employment with defendant she received poor evaluations due to her sex, which, in turn, affected the amount of pay throughout career. Justice Alito focused on "discriminatory intent," in that discrimination must have taken place at the denial of a raise or the actual cutting of checks, rather than through the evaluation process for a cause of action to exist. The 180 day deadline applied.

Right-to-Sue Letters from Missouri Commission on Human Rights

You can now get a right to sue letter upon request regardless of the status of the EEOC administrative process.

Missouri State Court Discrimination Claims use easier standard than Federal Claims.

McBryde v. Ritenour Sch. Dist., 207 S.W.3d 162 (Mo. Ct. App. 2006).

The court upholds MHRA jury instruction MAI 31.24 imposing liability on the employer when discrimination is a "contributing factor", an admittedly lower threshold than the Title VII "substantial or determining factor." The court stated:

> Therefore, in enacting MHRA, the legislature sought to prohibit any consideration of race or any other improper characteristic *no matter how slight* in employment decisions. The plain meaning of the MHRA imposes liability on an employer when an improper consideration is *a contributing factor*, regardless if other factors also exist. The plain language of the statute does not require a plaintiff to prove discrimination was a substantial or determining factor; a plaintiff need only demonstrate that discrimination was a contributing factor in employment decision.

Public School Teachers have Right to Bargain Collectively under Missouri Constitution

Independence-Nat. Educ. Ass'n v. Independence School Dist. 2007 WL 1532737, (Mo.) (Mo.,2007)
The Defendant questions whether public employees have the right to bargain collectively, and if yes, does the public employer have the right to unilaterally alter or nullify the existing agreement. The questions are interesting due to the no-strike laws, which

encompass teachers. *St. Louis Teachers Ass'n v. Board of Education*, 544 S.W.2d 573, 575 (Mo. banc 1976). The court answers: Yes, public employees have the right to collective bargaining, and No, public employer's may not unilaterally change existing agreements due to their contractual nature. 4 members concur with Chief Justice Wolff's opinion, 2 members concurring in part and dissenting in part (separately filed opinion).

<u>American's With Disabilities Act does not always require reassignment to "vacant" position.</u>

Huber v. Wal-Mart Stores, Inc., No. 06-2238 (8th. Cir. May 30, 2007)
The question on appeal was whether a qualified disabled employee, Huber, is entitled to be reassigned to a vacant position, where her employer has established policies to fill vacant positions with the most qualified applicant. The Court of Appeals followed the 7th Circuit in that the employer is not required to turn away more qualified persons to make way for a reassigned, qualified, disabled employee.

<u>300 Days or Else!</u>

Holland v. Sam's Club, No. 06-1321 (8th Cir. May 25, 2007)
Employee claimed continual sexual harassment, but could not specify any particular harassing event that occurred within 300 days of filing the charge. Employer bore the burden of proving limitations, but the employee presented no effective rebuttal to the defense. The employee's statements that there were many actions and inactions leading to a hostile work environment, were general and brief and not sufficient to support the claim. Summary judgment for employer granted.

<u>Separate Incidents of Sexual Harassment defined.</u>

Issacs v. Hill's Pet Nutrition, No. 06-2207 (7th Cir. May 4, 2007).
Plaintiff was sexually harassed in two different positions of the same company. Employer tried to break the events up into two separate violations. Issacs was entitled to present her treatment throughout her employment for Defendant. Court focused on similar control of the events. Defendant was also held liable under Title VII for its failure to act after receiving multiple complaints about harassment.

<u>Is there someone other than a Doctor in the House???</u>

Zwygart v. Jefferson County Bd., No. 06-3084 (10th Cir. Apr. 25, 2007).
Failure to provide foundation for a heart condition blocking him from a broad class of jobs lost a case for plaintiff. Plaintiff provided only the testimony of his cardiologist, which was 802 inadmissible. He should have provided the testimony of an occupational expert, who could attest to the limits of his condition.

<u>There is someone other than a Doctor in the House!</u>
Christensen v. Titan Distribution, Inc., No. 06-2760 (8th Cir. Apr. 10, 2007).
A case where plaintiff did provide the adequate foundation to show that he was blocked form 50% of the jobs in the relevant market. Controversy within the management of the defendant as to who actually made the decision to not hire Christensen also lead to an outcome for plaintiff. Inconsistent statements are the death knell of many cases.

<u>Prisoner Harassment is not actionable</u>.

Vajdl v. Mesabi Academy, No. 06-2482 (8th Cir. Apr. 25, 2007).
The court concluded where a youth worker is stationed in a facility that houses young sex offenders, unwanted sexual behavior should be expected. "The conduct of inmates cannot be attributed to an employer in order to show that the harassment affected a term, condition, or privilege of employment."

<u>Employer's rights to psychological exams.</u>

Thomas v. Corwin, No. 06-1496 (8th Cir. Apr. 4, 2007).
The plaintiff, in her capacity as a juvenile unit employee, was required to have substantial contact with troubled children, their parents, and to serve in a security back-up. She suffered an anxiety attack brought on by "work-related stress," resulting in a three-week leave. The department subjected plaintiff to a psychological exam, held not in violation of ADA because the test was "job-related and consistent with business necessity." The court also stated the police department had reason to "(1) doubt Thomas's capacity to perform her work duties without being overcome by stress and anxiety, (2) take proactive steps to ensure the safety of the public, Thomas and other Juvenile Unite employees, and (3) seek reliable attendance from Thomas, an employee within a small division requiring twenty-four-hour staffing."

<u>ADA "major life activities" continue to shrink.</u>

Gretillat v. Care Initiatives, No. 06-1738 (8th Cir. Mar. 30, 2007)
Plaintiff was a kitchen worker with osteoarthritis. The court held crawling, kneeling, crouching and squatting are not major life activities; and the plaintiff had the capability to mitigate her impairment.

<u>Your just not as attractive as the next person .</u>

Yuknis v. First Student Inc., No. 06-3479 (7th Cir. Mar. 28, 2007)
The 7th Circuit Court attempts to draw the line between being the target of sexual harassment and being in the target area of sexual harassment. The court concludes that if one is not the subject, target, of harassment or is not in the target area, but simply later hears of the offending conduct, she cannot be the subject of actionable harassment. The court uses Posner's position that the workplace mirrors society, and the court would be overrun if one were allowed to take action against an employer for offensive conduct

unrelated to the employee only to the extent that the he overheard, or heard of, such conduct.

<u>No More Switch a Roo.</u>

Lettieri v. Equant Inc., No. 05-1532 (4th Cir. Mar. 5, 2007)
This case questions the fourth prong of *McDonnell Douglas* test, and the different decision maker exception. A female employee was terminated by one manager, and replaced by another. By linking a group of managers to similar comments about the plaintiff's sex, the court found reason to substitute for the ordinary proof that the plaintiff was replaced by a person outside her protected group.

<u>Even a broken clock is right twice a day.</u>

EEOC v. DuPont E.I. DuPont de Nemours and Company, No. 05-30712 (5th Cir. Mar. 1, 2007)
Employee suffered from a walking hindrance, but her duties were essentially sedentary. DuPont declared that employees must show their ability to evacuate the building. Plaintiff was discharged, after failing the qualification, on permanent disability. Punitive damages were sustained after explanation of a myriad of cruel behavior to this particular employee.

<u>The Sergeant Shultz defense fails in the 10th Circuit.</u>

<u>Equal Employment Opportunity Commission v. BCI Coca-Cola Bottling Co</u> (10th Cir 06/07/2006) Cert Granted 1/5/2007, then dismissed on 4-12-2007.

BCI discharged Peters, who is black, for insubordination. EEOC claimed that BCI discriminated on the basis of race because similarly situated white and Hispanic employees were treated less harshly. The discharge decision was made by a human resources manager based on information provided by Peters' immediate supervisor plus a review of Peters' personnel record. The HR manager did not know Peters was black. The supervisor not only knew Peters' race but allegedly had a history of treating black employees unfavorably and making disparaging racial remarks in the workplace. The 10th Circuit held that this case should go to trial and reversed the trial court's ruling for the employer on summary judgment.