Employment Law in the Library

Pennsylvania Library Association
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Three Points

• Sexual Harassment (#MeToo)
• Accommodations for Religion and Disability
• Wage and Hour (overtime and exemptions)

#MeToo

“This appeal comes to us in the midst of national news regarding a veritable firestorm of allegations of rampant sexual misconduct that has been closeted for years, not reported by the victims.”

Minarsky v. Susquehanna County
### Harassment

*Prima Facie Elements*
- Harassment based on a protected class;
- Tangible employment action or sufficiently severe or pervasive to alter working conditions and create a hostile work environment;
- Harassment was unwelcome; and
- A basis for attributing liability to the employer.

### Sexual Harassment – Hostile Work Environment

- **Severe or Pervasive:**
  - Severe - Degree of Harm
  - Pervasive – Frequency, period of time
- **Offensive and Unwelcome:**
  - Objective – Reasonable Person
  - Subjective – Actual Plaintiff

### Hostile Work Environment by Supervisor

- Vicarious Liability, BUT…
- Affirmative Defense
  1. Employer exercised reasonable care to prevent and correct promptly any harassment; and
  2. Plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities.

### Harassment by Co-worker or Third Party

- Negligence Standard:
  - The employer knew or should have known about the harassment; and
  - The employer failed to take prompt and appropriate action to stop the harassment.
**Minarsky v. Susquehanna County**

- The employer had an anti-harassment policy;
- The employer provided the plaintiff with the policy;
- The employee failed to report the harassment for years; and
- When the employer found out about the harassment, it fired the harassing supervisor.

**Accomodations**

- Religion; and
- Disability

**Failure to Reasonably Accommodate**

*Prima Facie Elements*

- He or she has a disability;
- He or she is qualified for the position;
- Employer knew or should have known about the need for an accommodation; and
- A reasonable accommodation exists and the employer failed to provide one

**Examples of Disability**

- Deafness, blindness, mobility issues (wheelchair use)
- Intellectual disability, bipolar disorder, post-traumatic stress disorder
- HIV, cancer
**Interactive Process**
- Need for an accommodation becomes known to employer
- Good faith dialogue to identify reasonable accommodation(s)
- Implement an accommodation unless it imposes an undue hardship

**Undue Hardship**
- “Significant difficulty or expense” in relation to the size of the company, its resources, and the nature of its operations.
- “[U]nduly costly, extensive, substantial, or disruptive or that would require fundamental alteration of the nature or operation of the business.”

**Failure to Reasonably Accommodate**
*Prima Facie Elements*
- The existence of a sincere religious belief or practice that conflicts with an employment requirement;
- The employer was informed of the conflicting belief or practice;
- The employee suffered an adverse employment outcome due to adhering to the religious belief or practice; and
- A reasonable accommodation exists and the employer failed to provide one.

**Definition of Religion**
- Title VII: “…all aspects of religious observance and practice, as well as belief…”
- Includes atheism and agnosticism.
- Must be sincerely held (look for contradictory behavior).
Undue Hardship Defense
- Religion: “de minimis”
- Disability: “significant expense or difficulty”
- Easier to establish undue hardship for religion

Wage and Hour
- Overtime
- Exemptions

It’s Easy!
- Minimum Wage
- Time-and-a-half Overtime
- If only it were that easy . . .

Overtime
- 150% of regular rate for hours over 40 in work week
- “Work week”: Fixed and recurring period of 7 consecutive days
- Regular Rate: Total compensation divided by total hours
- Hourly wage – easy to calculate; what about salary?
White Collar Exemptions

Executive
- Salary of $455/week
- Primary duty: Management of enterprise, department, or sub-unit
- Authority to hire or fire (or significant input)
- Direct the work of 2+ Full-Time Employees (or equivalent)

White Collar Exemptions

Administrative
- Salary of $455/week
- Primary duty: Office or nonmanual work directly related to the management or general business operations
- Exercises discretion and independent judgment

White Collar Exemptions

Learned Professional
- Salary of $455/week
- Primary duty: Work that requires advanced knowledge, is predominantly intellectual in character, and entails the consistent exercise of discretion and judgment

Change on the Way?

Proposed PA regulation:
- The minimum salary amount is increased to $610 per week on the effective date of adoption of the final-form rulemaking;
- To $766 per week 1 year after the effective date; and
- To $921 per week 2 years after the effective date.
More Questions?

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