Ogletree Deakins

Supervisors Can Be Held Liable Under the MHRA

July 8, 2009

The Missouri Supreme Court has officially held that individual supervisors fall under the definition of "employer" in the Missouri Human Rights Act (MHRA) and can therefore be sued in their individual capacities for employment discrimination. According to the court, "The statute is clear that the MHRA is intended to reach not just the corporate or public employer but any person acting directly in the interest of the employer. A supervisory employee clearly falls into that category."

The Missouri Supreme Court has officially held that individual supervisors fall under the definition of "employer" in the Missouri Human Rights Act (MHRA) and can therefore be sued in their individual capacities for employment discrimination. According to the court, "The statute is clear that the MHRA is intended to reach not just the corporate or public employer but any person acting directly in the interest of the employer. A supervisory employee clearly falls into that category." *Hill v. Ford Motor Co.*, No. SC88981, Missouri Supreme Court (February 24, 2009).

Factual Background

Cynthia Hill was employed as a production worker at Ford Motor Company's assembly plant in Hazelwood. While working as a floater, Hill worked under a number of different supervisors including Kenny Hune. According to Hill, Hune frequently engaged in inappropriate, sexually harassing behavior. For instance, Hune allegedly told Hill and another female employee that he wanted one on top and one on bottom and once told Hill he could use an hour of "h—d."

In response to her complaints about the alleged hostile work environment, Paul Edds, the labor relations supervisor, allegedly instructed Hill to obtain psychiatric help and told her not to return to work until she did so. Edds ultimately rescinded his order that she see a psychiatrist but suspended her for three days for "disrespecting" her supervisor, including by refusing an order from Hune to wear her safety glasses. Following the three-day suspension, Hill took a medical leave from her job. She returned from her medical leave on December 1, 2002, after Hune was terminated.

In November 2002, Hill filed charges with the Equal Employment Opportunity Commission (EEOC) and the Missouri Commission on Human Rights (MCHR) alleging harassment and retaliation. After receiving "right-to-sue" letters from both agencies, Hill filed a lawsuit against Ford Motor Company and Edds. The trial judge granted summary judgment on Hill's harassment and retaliation claims and she appealed.

Legal Analysis

The Missouri Supreme Court reversed the grant of summary judgment to both defendants and finally determined that individuals can also be "employers" under the MHRA: "The MHRA is intended to reach not just the corporate or public employer but any person acting directly in the interest of the employer. A supervisory employee clearly falls into that category." This decision applies the trend established by Missouri appellate courts over the last few years in finding individual supervisor liability under the MHRA.

The other important aspect of the *Hill* case is that the court also held that Hill's failure to name Edds in her administrative charge with the EEOC did not preclude her from naming him in her subsequent lawsuit. The court stated that naming parties in the administrative charge serves two purposes: to give notice to the charged party and to provide the opportunity for conciliation. If the failure to name a party in the charge does not frustrate either of those purposes, and there is an "identity of interests" between the individual and corporate defendants, then the unnamed party has not been prejudiced by the failure to name him, and the individual can still be a named defendant in a lawsuit. Here, neither the EEOC nor the MCHR attempted to conciliate the charges; they both simply issued Hill a right-to-sue letter. Also, Hill produced evidence showing that it was likely that Edds had actual notice of her complaints against him. Thus, the court reversed the grant of summary judgment to Edds and remanded with instructions to consider whether he had been prejudiced.

Practical Impact

While the *Hill* decision confirms that managers and supervisors can be sued personally in state court, R. Lance Witcher, a shareholder in Ogletree Deakins' St. Louis office, says the real import of this decision is that employers will have to defend themselves in Missouri state court as opposed to federal court where they get a fairer shake. "Prior to the Missouri Supreme Court's 2003 decision in *Diehl v. O'Malley*, employment cases were rarely filed in state court because plaintiffs were not entitled to a jury. Since *Diehl*, cases have been increasingly filed in state court because there are fewer limits on the damages plaintiffs can recover and summary judgment is more of an uphill battle." Witcher notes that because plaintiffs have the ability to name resident defendants as parties, "most employment discrimination cases will not be removable to federal court where employers have less exposure and therefore, plaintiffs have less leverage." The obvious result will be more difficult, longer and expensive defense of these claims in the state courts.

Missouri employers should take immediate steps to avoid or minimize potential discrimination and harassment liability, including:

- Perform more comprehensive background investigations and reference checks and request information in writing from an applicant's prior employers pursuant to Section 290.152, RSMo.
- Continue regular anti-discrimination and anti-harassment training of all employ-ees, especially supervisors and managers.
- Advise supervisors and managers that they can be held individually liable for their decisions affecting subordinate employees.
- Consider implementing enforceable mandatory arbitration procedures or requir-ing valid jury trial waiver agreements from all employees so that unfair and one-sided jury trials are no longer a threat.

Note: This article was published in the July 2009 issue of the *Missouri eAuthority*.

TOPICS

Employment Law