



HR CORNER

FEES & BURGESS, P. C.



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Layoffs and Lawsuits: Court Analysis of Disparate Impact Claims in a RIF

Fees & Burgess, P.C.,
Emphasizes:

Due to extensive layoffs throughout the country, companies should expect a surge in lawsuits related to the layoff selection process. Age discrimination is one of the most common claims resulting from layoffs. Recent cases provide a refresher on court analysis of these layoff selections, and they highlight the main legal issues and defenses for employers who face age-discrimination claims.

The U.S. Supreme Court reviewed an age-discrimination claim in 2008 that stemmed from layoffs by a naval contractor in Meacham v. Knolls Atomic Power Laboratory 128 S. Ct. 2395 (2008). The company laid off 31 employees, of whom 30 were over the age of 40. The terminated employees sued the company alleging disparate impact and disparate treatment. First, the court reminds employers that there is a difference between the two theories. Unlike disparate treatment claims, where an employee must prove that the employer classified the over-40 employees differently than the under-40 employees, the “very definition of disparate impact [is] that an employer who classifies his employees without respect to age may still be liable under [the Age Discrimination in Employment Act (ADEA)] if such classification adversely affects the employee because of that employee’s age.” So, employees can bring age-discrimination claims even for unintentional employer conduct. Second, the court reviews the defense that employers must prove to avoid liability for disparate impact. The court states that, where there is evidence of any unintentional adverse impact, this must be attributed to *reasonable* factors other than age for an employer to avoid liability. The key analysis is whether the employer’s actions were reasonable. Finally, the court notes that the employer defense is different under the ADEA than in Title VII cases, which require proof of “business necessity.”

Despite the Supreme Court ruling, other lower courts may analyze age-discrimination cases using different legal theories, but with similar results. The Sixth Circuit Court of Appeals recently reviewed a claim alleging sex-based discrimination after a company layoff, and this case provides a separate analysis of age claims. In Shollenbarger v. Planes Moving and Storage, 297 Fed. Appx. 483 (6th Cir. 2008), female employees challenged the company’s reduction-in-force, alleging disparate impact against female employees. In its layoff, the company had selected 12 female employees and 1 male employee. Female employees at the company worked primarily in the customer service and billing departments, while most of the male employees worked in moving, storage, and warehousing departments.

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Layoffs and Lawsuits: Court Analysis of Disparate Impact Claims in a RIF*-continued from page 1*

The court explained that, to prove disparate impact, the employees must prove that a particular employment practice (here, selection of females in the layoff) caused a disparity between male and female employees, and that the increased selection of female employees substantially results in layoff disparities. Because the court determined that plaintiffs had established these basic elements, the court allows the defendant-employer to defend against this claim by proving “legitimate business justifications” for each particular selection. The company justified the increased selection of female employees by explaining that business concerns affected customer-service areas more so than the moving and warehousing departments. In addition, the court notes that laid-off employees offered no alternative practice or alternative selections that could have effectively accomplished the RIF without the alleged disparity.

While the analysis in Shollenbarger does not match the analysis of the Supreme Court in Meacham, the lesson for employers is clear. Before picking any candidates for layoffs, make sure that the company has concrete, rational, explainable criteria for selecting candidates. Whether justifying these selections under a “business necessity” test or a “reasonable factors other than age” test, employers must be able to prove that their choices were reasonable, consistent, and justified under the circumstances. In the event of a lawsuit or a charge of discrimination from the Equal Employment Opportunity Commission, the investigator and/or the court will want to know who made the specific decisions and the method by which the decisions were made. Does your company have documentation to prove this? Do the criteria used make sense? Is it justified by your business needs? Does the criteria relate to logical, non-biased factors? Employers should pay careful attention when making these decisions, and be careful that the entirety of the company’s layoffs makes sense.





Fees & Burgess, P.C.—Calendar of Events

Fees & Burgess, P.C., is proud to present, or participate in the presentation of, the following upcoming seminars:

February 20, 2009 – Anaheim, California

Contract Management and Business Arrangements: Risk Allocation in Critical Areas of the Contract, presented as part of *EMS Training II:Part C of the IPC EMS program Manager Training and Certification Program*

March 4, 2009—Albertville, Alabama

Navigating the Rocky Shoals of 2009 Changes in Legal Requirements, sponsored by Progress Rail Services Corporation. Topics will include: new Family Medical Leave Act regulations, certifications, and other requirements; new amendments to the Americans with Disabilities Act; Employee Free Choice Act highlights; E-Verify and I-9 requirements; Lilly Ledbetter Fair Pay Act, and more.

March 10, 2009 – Huntsville, Alabama

ADA Amendments Act of 2008, presented to the North Alabama Society for Human Resource Management

March 12, 2009 – National Contract Management Association Audio Seminar Series

Contracting under the UCC, CISG, UNIDROIT, and Other Laws or Rules

March 18, 2009— Albertville, Alabama

New Regulation Updates to Family and Medical Leave Act of 1993, presented to the Society for Human Resource Management of Marshall County, Alabama. This program will discuss the highlights of the most important changes in the regulations and the law.

March 25, 2009—Huntsville, Alabama

SHOW ME THE MONEY! A Recession-Era Guide to "Getting Paid" on Construction Projects! Presented to the North Alabama Chapter of Associated Builders & Contractors.

March 30, 2009 – Las Vegas, Nevada

Legal Issues in the EMS Industry for IPC EMS Management Council Meeting in conjunction with IPC APEX EXPO 2009

April 4, 2009 – Las Vegas, Nevada

Contract Management and Business Arrangements: Risk Allocation in Critical Areas of the Contract, presented as part of *EMS Training II:Part C of the IPC EMS program Manager Training and Certification Program*

April 6-7, 2009—Long Beach, California —2009 NCMA World Congress

Contracting under the UCC: A Basic Primer to Articles 1, 2, and 2A. Certification study sessions for Certified Commercial Contracts Manager (CCCM) Fast Track in conjunction with 2009 NCMA World Congress

June 11, 2009 – National Contract Management Association Audio Seminar Series

Uniform Commercial Code

For more information on these and other seminars, please go to <http://www.feesburgess.com/category/events-seminars/> or contact Donna Stoddart at dstoddart@feesburgess.com.





SPEAKERS

Fees & Burgess, P.C., provides speakers, training programs, seminars, and webcasts for various trade associations; business groups; and clients. For information regarding a program contact Julia Fees at jfees@feesburgess.com.

NEWSLETTERS

Fees & Burgess, P.C., also publishes *F&B Quarterly Bytes*, focusing on multiple practice areas; and *F&B SCM Memo*, focusing on the supply chain management industry. To receive any of these e-newsletters, please e-mail Donna Stoddart at dstoddart@feesburgess.com with your contact information.

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