



# Recent Developments In Employment Law

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## **SUPREME COURT RULES THAT ARBITRATION AGREEMENT DOES NOT BAR ADA ENFORCEMENT ACTION**

The U.S. Supreme Court has ruled that an agreement between an employer and an employee to arbitrate employment-related disputes does not bar the EEOC either from investigating the same claim the employee has agreed to arbitrate or from seeking an appropriate remedy for the aggrieved employee, such as back pay, reinstatement and damages.

*EEOC v. Waffle House, Inc.* (January 15, 2002) concerned an appeal from the Fourth Circuit, which had ruled that in cases involving a valid arbitration agreement between an employer and employee, the EEOC could still seek injunctive relief but could not seek victim-specific relief. The Fourth Circuit reasoned that when the EEOC seeks an injunction, it is vindicating a public right, and the federal policy in favor of enforcing arbitration agreements does not outweigh the EEOC's right to vindicate public rights. By contrast, the Fourth Circuit reasoned that when the EEOC seeks victim-specific relief, it is vindicating a private right, and the federal pro-arbitration policy outweighs the EEOC's right to vindicate private rights.

In reversing, the Supreme Court made three main points. First, the EEOC's right to seek relief for civil rights violations is not derived from the employee's rights. Title VII authorizes the EEOC to seek victim-specific relief independent of the employee. Second, victim-specific relief benefits the general public, not just a specific employee,

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because the award operates as a deterrent to **all** employers, thereby providing protection for all employees. Third, the Federal Arbitration Act does not require arbitration by anyone who has not agreed to do so. Thus, unless the EEOC is a party to an arbitration agreement, it cannot be bound by the agreement. To hold otherwise, said the court, would undermine the detailed enforcement scheme created by Congress in Title VII and the ADA.

This case means that even the best arbitration agreement will not necessarily keep an employer out of court. Once an arbitration has been completed, or even once the employee has agreed to a settlement and release, there is always the possibility that the EEOC will bring an action against the employer in connection with an independent investigation. For that reason, employers should be careful to preserve exculpatory documents, records and statements even after the arbitration or the settlement has been concluded.

### **SUPREME COURT ESTABLISHES STANDARD FOR DETERMINING DISABILITY STATUS UNDER ADA**

The United States Supreme Court has clarified the standard for assessing whether an individual who is substantially limited in performing manual tasks is “disabled” and entitled to protection under the Americans with Disabilities Act (ADA).

In *Toyota Motor Manufacturing v. Williams* (January 8, 2002), the employee sued her automotive manufacturer employer under the ADA, claiming to be disabled because her carpal tunnel syndrome and other related impairments limited her ability to perform both personal and professional tasks. The trial court ruled that the personal tasks the employee was limited in

performing were not major life activities and dismissed the case. The Sixth Circuit reversed, ruling that the fact that she was limited in performing numerous assembly line jobs established that she was disabled, without regard to her ability to perform personal tasks.

The Supreme Court clarified that in determining whether the employee was disabled, the court should look at the individual’s ability to perform activities that are of “central importance to most people’s daily lives.” It was “error” to look only at her ability to perform her job duties because ability to perform repetitive work with hands and arms extended at or above shoulder levels for extended periods of time is not an important part of most people’s daily lives. However, household chores, bathing, and brushing one’s teeth are the type of manual tasks of central importance to people’s daily lives and should have been a part of assessing whether the employee was disabled, *i.e.*, was she substantially limited in performing these tasks.

### **REQUIRED PSYCHIATRIC EXAM NOT AN INVASION OF PRIVACY**

The Michigan Court of Appeals vacated a \$462,449 jury verdict for an employee on her claim that her employer invaded her privacy by requiring her to undergo a psychiatric exam before she could return from a medical leave.

In *Valenti v. GKN Automotive, Inc.* (December 14, 2001), an employee on a medical leave told her employer that stress aggravated her condition. Her job, in fact, was stressful. The employer therefore required the employee to submit to a psychiatric exam before she could return to work. She claimed the requirement invaded her privacy. The court disagreed:

1. The examining psychiatrist was licensed and not employed by the company.

2. The employer only asked the psychiatrist to provide an opinion regarding the employee's "psychiatric condition relative to her ability to return to work" and did not ask for any other specific information, so the psychiatrist independently decided what information to include in the report.

3. The employee waived her right to privacy when she signed a broad medical release in her application for disability benefits and when she told coworkers and others about personal details.

This case is a reminder of the importance of having a carefully considered medical leave policy and following sound procedures when implementing that policy. Your policies and procedures should provide that an employee returning from a health-related absence may be required to submit to an examination concerning the employee's ability to perform the essential job duties before returning to work

### **SIXTH CIRCUIT CLARIFIES STANDARDS FOR DETERMINING EXEMPT STATUS**

As all employers know, the Fair Labor Standards Act ("FLSA") requires employers to pay employees 1½ times their regular hourly rate for all hours worked in excess of 40 in a workweek. Certain employees, such as administrative employees, are exempt from the overtime pay requirements. Unfortunately, employers often classify employees as exempt administrative employees when they do not meet the regulatory tests.

One particular factor that causes problems for employers is that administrative employees must perform work that requires the exercise of discretion and independent judgment. According to the regulations, the "most frequent cause of misapplication of the term 'discretion and independent judgment' is the failure to distinguish it from the use of skill in various respects." For example, an employee who "merely applies his knowledge in following prescribed procedures or determining which procedures to follow, or who determines whether specified standards are met . . . is not exercising discretion and independent judgment."

In *Ale v. Tennessee Valley Authority* (October 17, 2001), the employer learned the hard way that failure to properly apply the test for discretion and independent judgment by administrative employees can result in liability for unpaid overtime wages.

In *Ale*, 20 employees who worked in the TVA's Site Security Organization, including employees holding the titles of "Training Officer" and "Lieutenant," sued the TVA for unpaid overtime. The TVA argued, in part, that the employees were exempt administrative employees. A magistrate reviewed each position and concluded that the TVA had incorrectly classified the employees because none of them exercised the requisite discretion and independent judgment. On appeal, the Sixth Circuit upheld the magistrate's decision.

The Training Officer was responsible for training and retraining security officers. In performing his duties, he followed specific lesson plans and gave specific tests that were provided to him. The court concluded he did not exercise discretion and judgment because he did not write lesson plans, he merely adjusted them to incorporate administrative orders, and

because the testing simply required him to apply his knowledge following prescribed procedures and determining whether specified standards were met.

The Lieutenants supervised 15 to 30 officers. Each day, they made three patrols to observe security measures and make sure the officers complied with required procedures. Guidelines and instructions existed for almost every possible occasion. Again, the court concluded that the Lieutenants did not exercise discretion and judgment because nearly everything that they did and nearly every decision that they made was prescribed, controlled or governed by a regulation or instruction.

In its defense, the TVA argued, in part, that the magistrate failed to give the employees' job descriptions the proper weight. The court rejected this argument for two reasons. First, the court reasoned, in deciding FLSA cases, courts must focus on the actual activities performed by the employees. Second, in this case, the job descriptions were vague and did not contradict the employees' testimony regarding their day to day activities.

This case serves as an important reminder to employers that they cannot rely on their employees' job titles or job descriptions, or even their exercise of some supervisory functions, such as evaluating other employees, to determine their exempt status. Rather, employers must analyze their employees' actual functions in deciding whether they are exempt. In addition, with respect to administrative employees, employers must make sure that such employees actually exercise discretion and judgment in their work. As the *Ale* case demonstrates, employees who in practice have little leeway in the decisions they make will not meet the test for exempt administrative status.

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