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Federal Judges Recognize Growing Trend Of Dubious Workplace Discrimination Cases

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As complaints alleging job bias have skyrocketed, a relatively small (but growing) number of federal judges have garnered the courage to recognize a "disturbing trend in employment litigation." *Smith v. Datacard Corp.*, 9 F. Supp. 2d 1067, 1085 (D. Minn. 1998). Namely, the fact that more and more plaintiffs are bringing dubious workplace discrimination claims.

Private federal lawsuits alleging workplace discrimination have more than tripled during the 1990s. The Bureau of justice Statistics (BJS) reports in its latest study dated Jan. 16, 2000, that the number of federal civil rights complaints of all varieties increased from 18,793 in 1990 to 42,354 in 1998. BJS statistician Marika Litras correctly attributes this growth largely to the increase in employment discrimination cases between private parties, which soared from 6,936 in 1990 to 21,540 in 1998. The report confirms that this threefold explosion is traceable to new civil rights laws that have greatly increased the scope of employment practices considered discriminatory (such as the Americans With Disabilities Act of 1990), the availability of a jury trial, and the allowance of both compensatory and punitive damages under the Civil Rights Act of 1991.

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These recent developments have attracted a myriad of individuals who feel that they have been unfairly treated by their employers and who are now attempting to fit the facts of their grievances into the framework of the federal equal employment opportunity laws and related tort-based state law causes of action. The authors submit that plaintiffs, in an attempt to drag out the litigation process and make the granting of summary judgment more difficult, tend to allege a laundry list of questionable claims, with the ultimate goal of extracting a favorable settlement from the employer, who realizes that it would be more costly to defend the lawsuit than to settle it.

This article will comment on some of the leading federal judges making this point in New York and elsewhere.

Review of Key Cases

A 1993 decision by U.S. District Court Judge Gerard L. Goettel of the Southern District of New York demonstrates a federal judge legitimately losing patience with a plaintiffs "shotgun approach" to workplace discrimination litigation. In *Ricard v. Kraft General Foods Inc.*, No. 92 Civ. 2256 (GLG), 1993 WL 385129, at *3 (S.D.N.Y. Mar. 16, 1993) (Goettel, J.), *aff'd*, 17 F.3d 1426 (2d Cir. 1994), plaintiff, a secretary, was laid off but allowed to work as a floater while she applied for secretarial vacancies within the company. After plaintiff was not hired for any of the positions for which she applied, she brought suit against the company and her former supervisor, alleging religious, sexual and age-based discrimination; sexual harassment; and illegal retaliation. The court granted defendants' motion for summary judgment dismissing all claims, noting:

> It is not generally speaking, a good litigation tactic to attempt to ride several different legal causes of action at trial; it confuses issues and obscures the virtue of any meritorious claim. . . . the net result is an increased number of trials in highly questionable employment discrimination claims at a time when the court dockets are already overcrowded.
> *Id.*

Other federal judges have been blunt in recognizing that employment discrimination lawsuits have been filed merely in an effort to extort money from the employer. For example, in *Kristoferson v. Otis Spunkmeyer Inc.*, 965 F. Supp. 545 (S.D.N.Y. 1997), U.S. District Judge Jed S. Rakoff of the Southern District was particularly disturbed that this lawsuit was brought after plaintiffs had signed releases in exchange for severance pay and benefits. In analyzing whether the release was valid, the court candidly observed:

> No federal district court can ignore the wave of dubious and potentially extortionate discrimination cases currently flooding the federal docket. Undoubtedly part of the reason for this flood, which threatens to

> drown even valid anti-discrimination lawsuits in its wake, is the fact that current law enables such lawsuits to be brought at little or no economic risk to the plaintiffs, since such suits are typically brought on a contingent fee basis, with attorney fees recoverable by prevailing plaintiffs but not by prevailing defendants.

Id. at 548.

A more recent case from the U.S. District Court for the District of Minnesota provides similar evidence of a federal judge's loss of patience. In *Smith v. Datacard Corp.*, 9 F. Supp.2d 1067, 1085 (D. Minn. 1998), plaintiff, an African-American female janitorial employee, was dismissed for allegedly violating her employer's policy against the use of alcohol in the workplace. Plaintiff filed a 16-count complaint "based on a litany of statutes, doctrines and theories," including the Family Medical Leave Act, the ADA, Title VII, the Minnesota Human Rights Act and claims for negligent infliction of emotional distress, negligent hiring and retention, negligent supervision, and defamation. The employer moved for summary judgment, and the court, after analyzing each of plaintiffs claims, dismissed all but her Title VII hostile work environment claim. Judge Paul A. Magnuson expressed his dissatisfaction with the plaintiff's approach in this lawsuit, noting:

> A "shotgun" approach to litigation cannot and will not be tolerated by this court. Loading lawsuits with theory upon theory, and claim upon claim, does not protect the legal rights of an aggrieved individual. Instead, it merely drags out the litigation process and adds to the cost of an already costly undertaking.

Id. at 1085.

In *McNeill v. Atchinson, Topeka and Santa Fe Railway Co.* 878 F. Supp. 986 (S.D. Tex. 1995), U.S. District Court Judge Samuel B. Kent for the Southern District of Texas proved to be another federal judge who viewed a discrimination lawsuit as a form of "legalized extortion." The plaintiff in *McNeil* alleged that his employer violated the ADA by failing to reinstate him. Plaintiff sought to return to his former position only eight days after a jury awarded him $305,000 in damages for an on-the-job injury that allegedly rendered plaintiff permanently disabled and unable to work. In granting the employer's motion for summary judgment, judge Kent observed:

> Plaintiff's claim of discrimination is a blatant attempt to extort additional money from the defendant under the guise of the ADA. Congress enacted the ADA to address legitimate societal wrongs, and to reenfranchise the physically challenged . . . It was not the objective of the ADA, nor the intent of this court, to facilitate and ensure double recoveries for the exclusive benefit of a duplicitous plaintiff or his misled or over-eager counsel.

Id. at 991.

Call for Congressional Help

In apparent exasperation with the growing trend by the plaintiffs' bar of filing meritless employment discrimination lawsuits, U.S. District Court Judge Stanley Sporkin of the for the District of Columbia called for congressional reform. In *King v. Georgetown Univ. Hosp.*, 9 F. Supp.2d 4 (D.D.C. 1998), plaintiff, an African-American nurse, was reassigned to a position with the same salary, grade and benefits as her previous position, as a consequence of a reorganization at the hospital where she worked. Plaintiff alleged that her job responsibilities were diminished and that the reassignment might cost her future salary increases. After resigning from the hospital, plaintiff brought an action alleging race discrimination in violation of the Civil Rights Act of 1991 and District of Columbia law, and intentional infliction of emotional distress.

The court granted the employer's motion for summary judgment on all claims. Rather than simply voicing his objection to current discrimination law (as judge Rakoff did in the Kristoferson case the year before), judge Sporkin addressed his sense of frustration to Congress: "It would be hoped that at some point Congress would review the law in this area and make the necessary adjustments to eliminate these meritless, lottery-type cases." *Id.* at 8.

Conclusion

We applaud this handful of federal judges who have demonstrated the courage to speak out against these instances of extortion by lawsuit. The extortion tactic, however, still appears to be successful, as the BJS report indicates that, in 1998, 39 percent of employment lawsuits were settled out of court, up from 35 percent in 1990, while the number of lawsuits disposed of by trial declined from 9 percent in 1990 to 5 percent in 1998.

We do not assert that all of these cases involve workplace bias claims of dubious merit, but our own considerable experience as defense counsel teaches that a large and growing number do not present meritorious evidence of discrimination.

Perhaps the dramatic growth in workplace bias lawsuits of dubious merit will spur the increased vigilance of our judiciary to prevent misuse of the legal system by individuals driven purely by greed. Otherwise, this form of legalized extortion will continue, and, consequently, the public's already diminished perception of the legal profession will deteriorate further.