

February 19, 2008

RE: LEGAL UPDATE: Employer Must Determine Whether It Can Accommodate Religious Holidays Of Job Applicants Before Denying Them A Position On That Basis

Last month, the Massachusetts Supreme Judicial Court ruled that the State Transit Authority violated an applicant's rights under Massachusetts anti-discrimination law by not investigating whether anything could be done to accommodate the religious holiday schedule of a Seventh Day Adventist.

The applicant in the case, David Marquez, applied for a bus driver position with the Transit Authority. In doing so, Marquez made it known that he was not available to work from sundown on Fridays to sundown on Saturdays because it was the Sabbath. The Transit Authority responded by denying him a position, as Marquez would miss every Friday evening rush-hour shift.

The Massachusetts Supreme Court ruled that unless an employer can conclusively establish that all conceivable accommodations would impose upon it an "undue hardship," it must accommodate, or at least investigate whether it can accommodate, the religious holiday demands of the applicant. This process, according to the Court, should include an interview of the applicant to find out what accommodations, if any, can be made.

In the Marquez case, the Court ruled that the Transit Authority failed to present evidence that it did anything to determine whether any accommodation could be made for Mr. Marquez. The Court was especially troubled by the fact that the Transit Authority did not investigate the possibility of allowing Marquez and other busdrivers to swap shifts - thereby avoiding any "undue hardship" upon the Transit Authority. As a result of the Transit Authority's actions, the Court required the Transit Authority to offer Marquez a position, and further required the Transit Authority to pay Marquez \$50,000 for emotional distress and pay an additional \$53,550 in attorneys' fees.

In determining whether an employee's religious observance schedule is or is not an "undue hardship," the Court notes the following as general guidelines for employers to follow:

Undue Hardship

- leaving shift uncovered
- paying replacement drivers overtime to cover shifts
- requiring other employees to cover shifts

Not an Undue Hardship

- allowing employees to voluntarily swap shifts
- utilizing employer facilitated shift swapping program

Although a Massachusetts law decision, these principles also have general application beyond Massachusetts. They also serve to remind that applicants have rights similar to employees under the anti-discrimination statutes. If you have any questions, then please feel free to call or e-mail.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Bennett", with a stylized flourish at the end.

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