

PUBLICATION

Sixth Circuit Clarifies Standard for Employees to Plead Title VII Bias

July 16, 2012

On July 2, 2012, the U.S. Court of Appeals for the Sixth Circuit revived a race discrimination suit filed by a former employee of Humana Inc. on behalf of a class of employees and ruled that a Title VII plaintiff need not allege a prima facie case of discrimination in order to satisfy federal pleading requirements under U.S. Supreme Court precedent. Citing *Swierkiewicz v. Sorema*, the Sixth Circuit found that a Title VII plaintiff need not meet heightened pleading criteria beyond those required by the Federal Rules of Civil Procedure, and that the McDonnell Douglas prima facie case "is an evidentiary standard, not a pleading requirement."

"Significantly, the Supreme Court [in *Swierkiewicz*] identified the possibility that discovery may produce direct evidence of discrimination, rendering the McDonnell Douglas burden-shifting framework inapplicable to a plaintiff's claims," Judge Jane B. Stranch wrote. "The Supreme Court concluded that the ordinary rules of notice pleading apply and upheld the complaint because it gave 'fair notice' of the basis of the plaintiff's claims." The Supreme Court's subsequent decisions in *Bell Atlantic Corp. v. Twombly* and *Ashcroft v. Iqbal*, which arguably require more substantial pleading from plaintiffs, "did not alter" the Court's holding in *Swierkiewicz*, the Sixth Circuit said.

Accordingly, the employee was not required to allege a prima facie case of discrimination at the pleading stage, and her complaint included sufficient details about Humana's alleged discriminatory conduct to meet the "plausibility" standard set out in *Twombly* and *Iqbal*, the appeals court said.

Based on this ruling, employers will face a modestly harder time prevailing on motions to dismiss Title VII (and likely age and disability discrimination) allegations at the inception of a case. Accordingly, we recommend that defense attorneys focus their early efforts to dismiss these claims on arguing that employees have not met the heightened notice pleading requirements handed established over the past few years, and on limiting damage claims, where feasible, through the use of unconditional offers of reinstatement, aggressively litigating compensatory and front pay damages claims, and extending offers of judgment as necessary.

To discuss these and other litigation tactics, or to discuss how this decision could affect pending or future employment litigation, please contact any of our more than 70 Labor & Employment attorneys located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee; and Houston, Texas.