

EMPLOYMENT LAW UPDATE
Recent Decisions on employment law issues

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U.S. Supreme Court Cases

Ash v. Tyson Foods Inc., --U.S. -- , 126 S.Ct. 1195 (2006).

- Claims of race discrimination under Title VII and 42 U.S.C. Section 1981.
- Court vacated judgment by 11th Circuit Court of Appeals finding that the lower court erred in holding that modifiers or qualifications are necessary in all instances to render a disputed term probative of bias and in articulating a standard for determining whether the asserted nondiscriminatory reasons for defendant's hiring decisions were pretextual. Employer had called African American employee "boy". The Supreme Court stated: "Although it is true the disputed word will not always be evidence of racial animus, it does not follow that the term, standing alone, is always benign."

Arbaugh v. Y & H Corp., -- U.S. --, 126 S.Ct. 1235 (2006).

- Title VII case.
- Threshold number of employees (15) for application of Title VII to an employer is an element of a plaintiff's claim for relief, not a jurisdictional issue.
- Thus, issue cannot be raised at any stage of litigation and employer in a sexual harassment case who did not raise the issue until after adverse jury verdict waited too long to argue that it had too few employees to be covered by Title VII.

Tenth Circuit Court of Appeals

Title VII

Maldonado v. Altus, 433 F.3d 1294(10th Cir. 2006).

- Hispanic city street department employees alleged employer's English-only policy violated Title VII and 42 U.S.C. Section 1981 and 1983.

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- Ruling in favor of employer who implemented English-only policy reversed.
- Tenth Circuit held that a jury could reasonably find that the English-only policy had a disparate impact on Hispanic workers and trial court erred in concluding that employer had established a business necessity for the policy.
- Appeals court found the evidence of business necessity “scant” stating there was no prior written record of any relevant communications, morale or safety problems related to the use of a language other than English.

Reed v. Mineta, 438 F.3d 1063 (10th Cir. 2006).

- District court entered judgment on Title VII jury verdict for plaintiff and awarded prejudgment interest.
- Appeals court held that prejudgment interest should not have been calculated on entire back pay award from date of termination and remanded for recalculation.
- The court stated: “The purpose of making discrimination victims whole is limited, however, by recognition that prejudgment interest does not accrue until the victim actually sustains monetary injury.
- Although plaintiff was injured on date of termination, he did not actually suffer entire monetary injury at that time. Rather his monetary injuries were incrementally inflicted as each pay period passed and he went unpaid and prejudgment interest should have been calculated accordingly.

42 U.S.C. Section 1983

Perez v. Unified Gov’t of Wyandotte County, 432 F.3d 1163 (10th Cir. 2005).

- Denial of firefighter-defendant’s motion for summary judgment pursuant to qualified immunity is reversed.
- Defendant was responding to an emergency call and it was not alleged that defendant intended to harm plaintiff.

ADEA

Pippin v. Burlington Resources Oil and Gas Co., -- F.3d --, 2006 WL 337586 (10th Cir.).

- Employee terminated in RIFF filed age discrimination suit against his former employer.
- Court of Appeals affirmed district court’s decision granting summary judgment to employer.
- Appeals court found that the plaintiff failed to present sufficient evidence showing that employer’s proffered justifications for terminating him were a

pretext for age discrimination, stating that an employees own opinions of how a business should be run are insufficient to refute otherwise legitimate considerations.

- Court found the plaintiff also failed to establish evidence supporting a prima facie case of disparate impact applying the Supreme Court's recent decision in Smith v. City of Jackson, 544 U.S. 228 (2005).

Whittington v. Nordam Group Inc., 429 F.3d 986 (10th Cir. 2005)

- Discrimination claim under ADEA.
- The Tenth Circuit affirmed jury verdict for terminated 62 year old employee who was replaced by a 57 year old employee.
- Employer defended on the basis that 57 year old was not "substantially younger" than 62 year and therefore there was no evidence of discrimination.
- Court refused to set a bright line rule defining "substantial" age difference stating the amount of weight to be given a five year age difference was properly left to the jury.

New Mexico Supreme Court

New Mexico Human Rights Act

Juneau v. Intel Corp., 2006-NMSC-002, 139 N.M. 12, 127 P.3d 548.

- Claim of retaliation by employee implicated in an internal company sexual harassment complaint who steadfastly denied allegations of inappropriate conversations of a sexual nature at work and felt employer prejudged him as guilty and began campaign to get rid of him after he refused to admit guilt.
- Employee filed EEOC charge alleging retaliation and thereafter was disciplined and ultimately discharged.
- District court dismissed claim and in overruling that decision, the Supreme Court found that the employee had presented sufficient evidence to create a genuine factual dispute that needed to be resolved by a jury.

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