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LABOR AND EMPLOYMENT BULLETIN

February 22, 2006

SUPREME COURT CLARIFIES LEGAL STANDARDS FOR JOB DISCRIMINATION

Yesterday, the United States Supreme Court issued a short but important opinion that addressed two important legal standards in the area of employment discrimination.

The case arose in Alabama when two African-American employees sued their employer, Tyson Foods, claiming that they had been passed over for promotions in favor of less-qualified white employees. The employees argued that the plant manager's discriminatory intent was demonstrated by the fact that he had called them "boy." After a jury trial, the Court of Appeals ruled that the use of the word "boy," by itself, was legally insufficient to show that the decisionmaker was racially biased. The Supreme Court disagreed, and sent the case back to the Court of Appeals for further consideration of two main points.

First, the Supreme Court rejected the Court of Appeals' conclusion that being called "boy" could not be evidence of racial discrimination. The Supreme Court reasoned that while the term "boy" by itself did not carry any negative racial connotations, "it does not follow that the term . . . is always benign. The speaker's meaning may depend on various factors including context, inflection, tone of voice, local custom, and historical usage." Because the lower courts had not considered these additional factors, the Supreme Court sent the case back for re-examination. The Supreme Court's holding is significant because it means that courts cannot automatically disregard alleged comments that are not facially discriminatory or derogatory, but instead will have to examine any and all alleged comments in detail to

determine whether they were discriminatory or derogatory in a given context. For employers, this means that employees who make claims of harassment , discrimination or retaliation likely will allege that all sorts of comments made by supervisors and managers had an underlying discriminatory basis, and that employers will have to spend significant time and money defending those comments.

The Supreme Court also instructed the Court of Appeals to re-examine the legal standards it used in comparing the plaintiffs' qualifications with the promoted employees' qualifications. The Court of Appeals had written that the plaintiff's purportedly superior job qualifications could be considered evidence of discrimination only if "the disparity in qualifications is so apparent as virtually to jump off the page and slap you in the face." The Supreme Court stopped short of saying that the Court of Appeals' ultimate conclusion was wrong, but it found the "slap in the face" standard to be "unhelpful and imprecise" and instructed the Court of Appeals to articulate clearer standards that would help lower courts reach more consistent results.

In the coming months, the Eleventh Circuit Court of Appeals will again review the case and will issue a new decision under the clarified legal standards. Although much will depend on the Eleventh Circuit's revised decision, the Supreme Court's decision may make it easier for plaintiffs to have their discrimination claims heard by a jury. We will watch for the revised decision and will inform you of any further developments.

The case is *Ash v. Tyson Foods, Inc.*, No. 05-379 (Feb. 21, 2006).

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