Policies And Procedures Pay Off For Car Manufacturer In USERRA Case

Insights
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(Labor Letter, July 2010)

Earlier this year, a federal appeals court ruled in favor of Hyundai Motor Manufacturing Alabama, LLC (HMMA) in a case brought under the Uniformed Services Employment and Re-Employment Rights Act of 1994 (USERRA). In his complaint, ex-employee Jerry Leon Dees alleged that he was discriminated against and harassed based on his National Guard membership, and that he was ultimately fired because of his National Guard obligations. One of the key issues was whether Dees had standing to bring a USERRA harassment claim since he did not suffer lost wages or loss of other employee benefits.

The case was dismissed by a federal district court. On appeal the U.S. Court of Appeals for the 11th Circuit upheld the lower court's action. *Dees v. Hyundai Motor Mfg.*

Background
USERRA provides that a member of the Armed Services "shall not be denied initial employment, re-employment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership." To establish a *prima facie* case under USERRA, an employee must show by a preponderance of the evidence that his protected status was "a motivating factor," in an adverse employment decision, but that status need not be the sole cause as long as "it is one of the factors that a truthful employer would list if asked for the reasons for the decision."

Here, the court found that Dees failed to establish that HMMA took into account his military service in its decision to terminate him. Dees testified that he believed he was fired due to his Guard obligations because it "seem[ed]" that way and because "everything stemmed around [his] drill weekends," but such unsupported conclusory statements are insufficient, and the federal district court threw the case out. The court relied on the fact that the evidence established that HMMA was aware of Dees' military obligations when he was hired in 2005, and that he was never disciplined for missing work due to Guard training. Furthermore, HMMA's military policy provides for absences due to military obligations, and HMMA even pays the difference between military pay and regular wages up to a month.

The court also found that Dees lacked standing to bring a USERRA harassment claim. USERRA provides that a court may award three types of relief: 1) an injunction requiring an employer to comply with USERRA's provisions; 2) compensation for lost wages or benefits suffered by reason of the employer's failure to comply with USERRA; and 3) liquidated damages in an amount equal to lost wages or benefits if the employer's failure to comply with USERRA was willful.

The court assumed without deciding, that a USERRA harassment claim is cognizable, but it found that Dees lacked standing to bring such a claim because he admitted that he had not suffered any lost wages or employment benefits from the alleged harassment. Further, an injunction requiring HMMA to comply with USERRA could not benefit Dees, as he was no longer an HMMA employee. Although Dees' attorney argued that he should be granted "equitable relief," he only specifically sought attorney's fees. The statute provides for three specific remedies for USERRA violations and does not provide for other "equitable relief or attorney's fees." As such, the court rejected that case law and found Dees lacked standing to bring his USERRA harassment claim.

The Take-Home Lesson

Although the automobile manufacturer was awarded summary judgment, the case raises some interesting issues. First, the court assumed, without deciding the question, that an employee could bring a harassment claim under USERRA. Thus, employers should make sure that the anti-harassment provision in their handbooks (your handbook has one, doesn't it?) also include USERRA, and should conduct training in this regard along with the more common forms of training, such as sex harassment and race harassment.

Second, it's significant that HMMA was aware of Dees' military service at the time it hired him. Just as in age cases where an employer may hire an employee over the age of 40 and the court permits an inference that the employer did not engage in age discrimination, so too, the court here found that the employer was aware of Dees' military obligations at the hire date and that same type of inference was applicable.

The bottom line is, although an employee's military service – particularly extended military service – might cause headaches for employers, you should always be aware of the protections afforded to employees under USERRA, and corresponding state laws, and take the necessary steps to ensure compliance.

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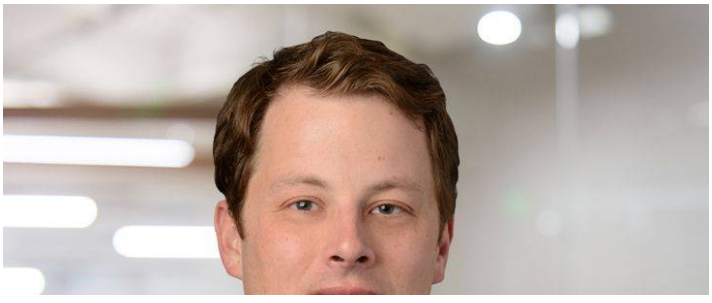

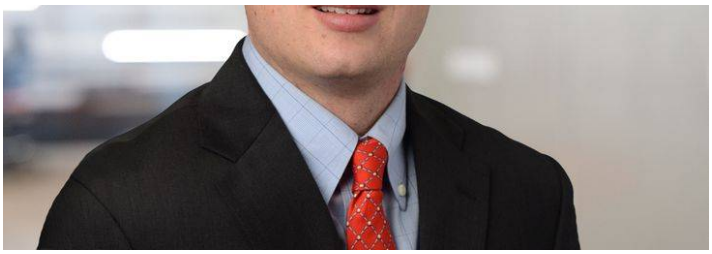

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