



THE YEARBOOK
OF EDUCATION LAW
2005

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Introduction

This year's chapter reviews about 170 cases involving employees in public and non-public K-12 schools. No Supreme Court cases involving K-12 discrimination were rendered this year. However, Supreme Court decisions are cited where they provided important precedent for lower-court opinions. This chapter excludes cases that focus primarily on procedural matters. As in past years, the section with the largest number of cases concerns dismissal, nonrenewal, demotion, and discipline, along with school board compliance with district and state policies.

Discrimination in Employment

Discrimination claims can arise under state or federal statutes. Even so, most suits identifying state law as a claim also invoke federal law, if for no other reason than that states tend to follow federal law in interpreting their own anti-discrimination laws. However, states may also act under their own laws to protect categories that may be the same as or different from those under federal law.

Federal nondiscrimination statutes are divided into two broad groups: those prohibiting discrimination in employment and those forbidding it in educational institutions receiving federal assistance. The employment statutes include Title VII of the Civil Rights Act of 1964,¹ which prohibits discrimination on the basis of race, color, religion, sex, and/or national origin; the Age Discrimination Act in Employment Act of 1967 (ADEA)² that forbids discrimination against persons forty years of age or older; the Americans with Disabilities Act of 1990 (ADA)³ outlaws discrimination on the basis of disabilities in employment, by state and local governments, and in public accommodations; and the Family and Medical Leave Act (FMLA),⁴ which accords employees the right to extended leave for personal and family medical needs and illnesses. A less-litigated statute is the Uniform Services Employment and Reemployment Act (USERRA)⁵ that prohibits discrimination due to membership, application for membership, performance of service, application for service, or obligation of a person in the uniformed services.

Statutes requiring the reception of federal assistance include the Rehabilitation Act of 1973 (section 504),⁶ which prohibits discrimination on the basis of disabilities; Title IX of the Educational Amendments of 1972,⁷ which forbids gender discrimination; the Equal Pay Act of 1963, which

¹ 42 U.S.C. § 2000 *et seq.*

² 29 U.S.C. § 621 *et seq.*

³ 42 U.S.C. § 12101 *et seq.*

⁴ 29 U.S.C. § 2611 *et seq.*

⁵ 38 U.S.C. § 4311.

⁶ 29 U.S.C. § 794.

⁷ 20 U.S.C. § 1681 *et seq.*

outlaws gender-based wage discrimination;⁸ and Title VI of the Civil Rights Act of 1964,⁹ which seeks to eliminate discrimination on the basis of race, color, or national origin.

Remedies for discrimination can also be pursued under two other federal statutes that may apply to both employment and non-employment situations. Section 1981 of the Civil Rights Act of 1866¹⁰ prohibits discrimination on the basis of national origin and race in making contracts. Section 1983 of the Civil Rights Act of 1871,¹¹ which contains no discriminatory categories of its own, is a vehicle for seeking damages for violations of federal constitutional and statutory rights.

Discrimination in Employment

Discrimination claims arose in areas other than those represented by the individual categories in this section. The Eleventh Circuit upheld a grant of summary judgment in favor of a school board in Alabama when a teacher claimed that officials denied her maternity leave under the FMLA.¹² The court rejected the teacher's claim that her contract was not renewed in retaliation for her having requested maternity leave, reasoning that since she was ineligible for maternity leave at the time she requested it, she had no claim for retaliation.

A federal trial court in Alabama held that a city recreational employee presented a claim for loss of a "benefit of employment" under the USERRA.¹³ The court ruled that the existence of material facts, including demoting him from head football coach at a middle school while retaining the same job rank, forcing him to use vacation time to cover military duty absence, and denying his timely merit-based raise, presented triable claims under the USERRA. However, the court explained that since the employee did not have a property right in the position of head football coach, he had no due process claim. In addition, since USERRA has a comprehensive remedial scheme, the court did not think that the plaintiff had an equal protection claim that his employer denied him benefits due to his military status.

In a sequel to the dismissal of a discrimination complaint by a white male teacher, who was over forty years of age, of Irish-American descent, and allegedly had a disabling asthmatic condition, a federal trial court in New York ordered him to pay the costs of both his school board and teachers' association. In directing the teacher to pay over \$30,000 in costs, the court

⁸ 29 U.S.C. § 206(d)(1).

⁹ 42 U.S.C. § 2000d.

¹⁰ 42 U.S.C. § 1981.

¹¹ 42 U.S.C. § 1983.

¹² Walker v. Elmore County Bd. of Educ., 379 F.3d 1249 [191 EDUC. L. REP. 124] (11th Cir. 2004).

¹³ Harris v. City of Montgomery, 322 F. Supp. 2d 1319 [189 EDUC. L. REP. 721] (M.D. Ala. 2004).

observed that he “should not be immune or shielded from the consequences of his protracted litigation and the litigation strategy pursued by his attorney.”¹⁴

A federal trial court in Pennsylvania, in a procedural case, asserted that a substitute teacher’s failure to exhaust administrative remedies was fatal to her Title VII claim arising from her dismissal.¹⁵ The court maintained that the teacher failed to allege that she filed race and retaliation discrimination charges with the EEOC or the Pennsylvania Relations Commission.

Race

The prerequisite to any employee discrimination claim is that a plaintiff must have experienced an adverse employment action. A federal trial court in Mississippi was of the view that a black teacher failed to present a section 1983, race-discrimination claim after she was transferred from her long-term position as instructor of business and computer technology for high school students to a job as a seventh-grade career discovery instructor.¹⁶ The court rejected the teacher’s claim that her being transferred was equivalent to a demotion since it required less skill and she had no recent experience teaching seventh grade. Instead, the court found the transfer not to be an adverse employment action because the teacher received the same pay and benefits and the working conditions were identical.

Ordinarily, while an employee’s quitting voluntarily does not constitute an adverse employment action, it can if a plaintiff can produce evidence demonstrating constructive discharge. In such a case, the federal trial court in Connecticut decided that a black director of curriculum had just such evidence.¹⁷ Although the court granted the school board’s motion for summary judgment on a variety of other claims, it agreed that a fact-finder could infer the existence of a constructive discharge in light of repeated threats that the director’s position would be eliminated, the deputy superintendent’s public usurpation of her authority in front of her subordinates, the administration’s manipulation of her curricular responsibilities, petty reprimands, and the superintendent’s suggestion that the board buy back her contract.

Most plaintiffs failed in their discrimination claims based on race; some fail specifically because they lacked a prima facie case. In Missouri, a black school counselor whose contract was not renewed failed to present sufficient evidence to establish a prima facie claim that she was discriminated against due to her race.¹⁸ In affirming a grant of summary judgment in favor of the school board, the Eighth Circuit noted that officials proffered nondiscriminatory reasons for the counselor’s lack of improvement such as keeping her office

¹⁴ *Murphy v. Bd. of Educ. of Rochester Sch. Dist.*, 308 F. Supp. 2d 148, 151 [187 EDUC. L. REP. 72] (W.D.N.Y. 2004).

¹⁵ *Joynier v. Sch. Dist. of Phila.*, 313 F. Supp. 2d 495 [187 EDUC. L. REP. 881] (E.D. Pa. 2004).

¹⁶ *Bell v. S. Delta Sch. Dist.*, 325 F. Supp. 2d 728 [190 EDUC. L. REP. 350] (S.D. Miss. 2004).

¹⁷ *Grey v. City of Norwalk Bd. of Educ.*, 304 F. Supp. 2d 314 [186 EDUC. L. REP. 143] (D. Conn. 2004).

¹⁸ *Cherry v. Ritenour Sch. Dist.*, 361 F.3d 474 [186 EDUC. L. REP. 22] (8th Cir. 2004).