



The Personnel File

NEWS AND DEVELOPMENTS IN EMPLOYMENT LAW FOR CALIFORNIA'S EMPLOYERS

“Dozens of Plaintiffs for Every Position” – *Reeves v. MV Transportation, Inc.* Reemphasizes the Importance of Retaining Hiring-Related Documents

Introduction

Attorneys and human resources professionals frequently emphasize the importance of documenting employee performance and disciplinary issues, and for good reason. Should an employee or former employee file suit against the company, this documentation will provide a reliable record of the events in question that the company may rely on in defending itself. The same rationale applies to another large group of potential plaintiffs that do not always receive as much attention: job applicants. In these difficult economic times, a single advertised position may draw dozens, or even hundreds, of applications. Unfortunately, each unsuccessful applicant is a potential plaintiff. As the recent *Reeves v. MV Transportation, Inc.* case illustrates, keeping detailed records regarding the screening, interviewing and hiring process is critical in defending discrimination cases based on claims of failure to hire.

Facts

In 2005, David Reeves applied for a position as a labor and employment attorney with Defendant MV Transportation, Inc. (“MV”). Although Reeves had extensive labor law experience, he was not hired for the position. In fact, he was not even interviewed. At the time of his rejection, Reeves was 56 years old. Instead, MV hired a 40-year-old attorney, Gail Blanchard-Saiger, for the position. John Biard, MV’s General Counsel and Chief Legal Officer, later testified that he interviewed Blanchard-Saiger based on a recommendation from an attorney he knew, and because he was impressed by her credentials and experience. After interviewing Blanchard-Saiger, Biard testified that he felt their personalities “just clicked.” Blanchard-Saiger began her position at MV in April 2005.

Biard later testified he did not interview Reeves because he lacked time to interview all qualified candidates, and because he “found precisely the candidate he was looking for” in Blanchard-Saiger. However, Biard did acknowledge that he formed a negative impression of Reeves because Reeves submitted his résumé from his employer’s email address during working hours. Biard also disliked the fact that Reeves had never worked for a law firm, and did not highlight his litigation experience on his résumé. After his rejection, Reeves sued MV under the California Fair Employment and Housing Act (“FEHA”) alleging that he had not been hired for the position because of his age. After the trial court dismissed his case at the summary judgment stage, Reeves appealed.

In order to state a claim for age discrimination, a plaintiff must establish a *prima facie* case by showing that: 1) he was a member of a protected class; 2) he was qualified for the position sought; 3) he suffered an adverse employment action (such as the denial of an available position); and 4) some other circumstance that suggests a discriminatory motive. If the plaintiff is able to make such a showing, the burden shifts to the defendant to identify a legitimate, nondiscriminatory reason for the decision. In this case, MV did not dispute that Reeves had established a *prima facie* case of age discrimination, and Reeves did not dispute that MV presented legitimate, nondiscriminatory reasons for failing to hire him. Therefore, the burden shifted back to Reeves to offer evidence that MV's stated reasons for its failure to hire him were untrue or pretextual, or evidence that MV acted with a discriminatory animus, or a combination of the two.

Qualifications

In an attempt to show that MV's reasons for its failure to hire him were pretextual, Reeves first argued that his credentials were superior to Blanchard-Saiger's. However, the Court of Appeal found that, in order to show pretext in a case of discriminatory failure to hire, a plaintiff must establish that his qualifications were "vastly superior" to those of the successful candidate. In this case, the Court of Appeal found that while Reeves may have had more experience in labor law, Blanchard-Saiger had more experience in employment litigation. Because Reeves' experience could not be reasonably viewed as "vastly superior" to Blanchard-Saiger's, the Court of Appeal found that Reeves failed to establish that MV's reasons for failing to hire him were pretextual.

Inconsistent Explanations

Second, Reeves argued that MV's explanations for its failure to hire him were inconsistent. Specifically, Biard gave varying answers to questions regarding the number of other candidates interviewed for the position, and whether Reeves was qualified for the position. Although a plaintiff may reach trial if he can show that his employer gave contradictory, implausible, uninformed, or factually baseless explanations for its decision, the Court of Appeal found that, in this case, these discrepancies were accurately characterized as "imperfect recollections" and "slight exaggerations." The Court found that these discrepancies did not rise to the level of "fundamentally different justifications" for making the decision not to hire Reeves. Therefore, the Court of Appeal found that Biard's inconsistent answers were not enough to establish that MV's reasons for failing to hire Reeves were pretextual.

Destruction of Evidence

Finally, Reeves argued that the judgment should be overturned because MV had destroyed evidence relevant to the case. Earlier in the litigation, Reeves asked MV to produce all employment applications it received for Blanchard-Saiger's position. MV responded by stating that it discarded all applications and résumés after it hired Blanchard-Saiger. MV's Director of Human Resources later testified that in 2005 and 2006, it was MV's standard practice to discard employment applications. However, California Government Code section 12946 requires employers to retain all job applications for at least two years after receiving such documents. In

assessing the evidence, the Court of Appeal found that MV had an obligation to preserve the applications, that it destroyed the documents with a culpable state of mind, and that the employment applications might have disclosed evidence relevant to Reeves' case.

Nonetheless, the Court of Appeal found that MV's destruction of the job applications was insufficient to reverse the trial court's dismissal of Reeves' case. The Court of Appeal noted that, although destruction of evidence may "push a claim that might not otherwise survive summary judgment over the line," a plaintiff must provide some other evidence supporting his claim in order to proceed to trial. In this case, the Court of Appeal found that Reeves did not have superior credentials to Blanchard-Saiger, and that MV did not offer fundamentally inconsistent explanations for failing to hire him. Therefore, the Court of Appeal affirmed the trial court's dismissal of Reeves' case.

Avoiding Discriminatory Failure to Hire Suits

Although Reeves' case was ultimately dismissed, it illustrates the legal pitfalls associated with the hiring process, and the importance of creating and retaining hiring-related records. First, it is important to remember that a plaintiff may reach trial if he can show that a potential employer gave shifting, implausible or contradictory explanations for its decision not to hire. Applicants will often wait months after their job application is rejected before filing a complaint. At that point, the decisionmaker may no longer remember the rationale for rejecting the applicant, or may no longer work for the company. Therefore, it is critically important that decisionmakers record their impressions of applications and applicants, and retain those records for future use.

Second, in addition to recording and retaining the decisionmaker's impressions, this case illustrates the importance of preserving job applications and résumés themselves. In addition to the California Government Code requirement that employers retain job applications for at least two years, employers also have a duty to preserve records that could be relevant to reasonably foreseeable litigation. Although the Court found that Reeves' evidence was not sufficient to sustain his appeal, it also cautioned that destruction of evidence could push a "close case" over the line. Thus, employers must maintain all employment applications for at least two years, and should consult with legal counsel before destroying records related to any employee or applicant who might reasonably be expected to file a complaint or lawsuit.

Conclusion

Reeves v. MV Transportation, Inc. makes it clear that a plaintiff alleging discrimination based on failure to hire must present evidence that his or her qualifications were significantly better than those of the successful candidate. In addition, plaintiffs relying on an employer's inconsistent explanations for an employment decision must present evidence of clearly contradictory, implausible, or baseless reasons, and not simply imperfect recollections. The *Reeves* case also establishes that, although a plaintiff must present some evidence of discrimination, destruction of evidence may help an employee with a mediocre case reach a jury. In light of this decision, employers should review their hiring practices to ensure that they document their impressions of job applicants, and that these records, along with the job applications themselves, are preserved.

This article was written by Brianne Marriott, an attorney with the labor and employment law firm of Liebert Cassidy Whitmore. Ms. Marriott is an Associate in the Fresno office and can be reached at (559) 256-7800 or at bmarriott@lcwlegal.com. For more information regarding the information above or our firm please visit our website at www.lcwlegal.com, or contact one of our offices below.

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6033 W. Century Blvd., Ste 500
Los Angeles, CA 90045
(310) 981-2000

5701 N. West Avenue
Fresno, CA 93711
(559) 256-7800

153 Townsend St., Ste 520
San Francisco, CA 94107
(415) 512-3000