

Employees Alleging Disability Discrimination - 2006

Employees alleging disability discrimination must choose between state and federal court, according to an October 17 ruling by the Court of Appeals. The Court held that "the clear meaning of the [North Carolina Disabilities Act] does not allow a plaintiff to file simultaneous federal and state claims, then see which one has a better chance of being successful."

Carlie Bowling was a pharmacist who had been terminated from employment following a period of administrative leave due to concerns that his performance was a threat to patient. He then filed a claim with the EEOC, alleging that he had been discriminated against in violation with the Americans with Disabilities Act due to migraine headaches. While his charge was pending with the EEOC, he also filed an action in state court alleging violation of the North Carolina Disabilities Act, as well as common law claims of wrongful discharge in violation of public policy and negligent infliction of emotional distress. The trial court dismissed all state court claims and Bowling appealed.

In upholding the dismissal of Bowling's state court case, the Court of Appeals noted both the short statute of limitations and the plain language of the North Carolina Persons with Disabilities Protection Act ("NCPDPA") in holding that plaintiffs alleging disability discrimination must choose either federal or state court, not both. The statute states: "No court shall have jurisdiction over an action filed under this Chapter where the plaintiff has commenced federal judicial or administrative proceedings...under the Americans with Disabilities Act of 1990, ...involving or arising out [sic] the facts and circumstances involved in the discriminatory practice under this Chapter. If such proceedings are commenced after a civil action has been commenced after a civil action has been commenced under this Chapter, the State court's jurisdiction over the civil action shall end and the action shall be forthwith dismissed."

The Court concluded that this language not only prevents state courts from having jurisdiction over claims which arise from the same facts and circumstances as a pending federal administrative or judicial proceeding, but that the statute also "strips this State's courts of such jurisdiction" if a federal claim is filed after a state claim.

This is consistent with a 2004 federal court decision which held that courts would dismiss plaintiff's claims arising under the NCPDPA when they arise out of the same set of facts as an ADA or Rehabilitation Act claim.

Thus, as a practical matter, a plaintiff proceeding in a federal forum, either administratively with the EEOC, or in federal court at the conclusion of the EEOC process, will be precluded from pursuing statutory claims in North Carolina's state courts. Employers facing cases alleging disability discrimination will want to carefully monitor where such cases are filed to avoid expending time and resources in duplicative matters, and to consolidate remaining claims in a federal forum as quickly as possible.

See *Bowling v. Pardee Memorial Hosp.*, 2006 WL 2946204 (N.C. App. 2006) and *Cone v. Randolph County Schools*, 302 F. Supp.2d 500 (M.D.N.C. 2004).

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