

Labor and Employment Alert

High Court Rules in ADA Drug-Testing Case

Expectations that the U.S. Supreme Court would decide whether an employer discriminated against a worker -- fired after testing positive for drugs -- when it refused to rehire him after his rehabilitation were dashed earlier today. This morning, the Justices sent the case of *Raytheon Company v. Hernandez* back to the Ninth U.S. Circuit Court of Appeals after concluding that the wrong legal analysis was used.

Joel Hernandez worked for Hughes Missile Company. After testing positive for cocaine, he was allowed to resign rather than be terminated. Nearly three years later, he reapplied for a job with Hughes. He attached a copy of his resume and two reference letters indicating that he had overcome his drug and alcohol addictions.

Hughes reviewed Hernandez's application and his personnel file. After determining that he had quit in lieu of discharge, his application was rejected based on an unwritten policy of not rehiring former employees who either had been terminated for misconduct or resigned in lieu of termination.

Shortly thereafter, Hernandez filed a lawsuit against the company under the Americans with Disabilities Act (ADA) arguing that he had been discriminated against on the basis of a perceived disability and/or a record of a disability. The trial judge dismissed the suit, but the Ninth Circuit reinstated the case. The U.S. Supreme Court subsequently agreed to hear the case.

The Court concluded that the Ninth Circuit's analysis of Hernandez's allegation that he had been discriminated against was improper. Specifically, the Justices found that the Ninth Circuit used the wrong standard to evaluate the company's explanation. According to the Ninth Circuit, the company's no-rehire policy may bar the reemployment of rehabilitated drug addicts and therefore it is not a legitimate, nondiscriminatory basis for rejecting his application.

The Supreme Court described the company's no-rehire policy as "a quintessential legitimate, nondiscriminatory reason for refusing to rehire an employee who was fired for violating workplace conduct rules." The Ninth Circuit should have then turned to whether this explanation was a "pretext" for illegal discrimination. Thus, the Court sent the case back to the Ninth Circuit. The question of whether refusal to rehire a lawfully terminated disabled employee was discrimination was never reached. *Raytheon Company v. Hernandez*, No. 02-749, U.S. Supreme Court, December 2, 2003).

The positive news for employers is that the high court clearly believes that no-rehire policies are a legitimate explanation for not rehiring a disabled worker fired for misconduct. The worker, however, still has the opportunity to show that the real reason for the decision is illegal discrimination. The Supreme Court did not address whether those policies may be challenged under the disparate impact theory. As a result, there remain many unanswered questions in this area. Look for more on this case in a future issue of North Carolina Employment Law Letter.

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