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Pro-Union California Law Struck Down by Supreme Court

California's Legislature and the union movement took a hit when the U.S. Supreme Court struck down a state law that barred companies from speaking out against unions if the company receives state funds. The decision wasn't even close. It was a 7 to 2 vote with an opinion written for the majority by Justice Stevens. Justices Breyer and Ginsburg dissented. The opinion was offered on June 19, 2008.

Employers doing business with California would have been prevented by Assembly Bill 1889 from using the state funds to "assist, promote, or deter union organizing." (Cal. Govt. Code Ann. Sec. 16645.2(a), 16645.7(a)) The Court noted that the National Labor Relations Act, amended by the Taft Hartley

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"Reasonable Factors Other Than Age" An Employer Burden

The employer bears both the burden of production and the burden of persuasion…

If you are laying off workers, or planning to do so, be sure to apply statistical testing to your data to determine if there may be some disparate impact for people over 40 years of age. That can happen even though the layoff procedures have been well thought out and appear to be age neutral in appearance.

A federal contractor was ordered by the Federal Government to reduce its work force. The company ordered its managers to score subordinates on "performance," "flexibility," and "critical skills." These scores, along with points for years of service, were used to determine who was laid off. 30 of the 31 employees laid off were at least 40 years old.

The company claimed its system was adequate, and a defense

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9th Circuit Employers May Not Look At Text Messages

Arch Wireless contracted with the City of Ontario, California to provide wireless text-messaging services. The City received twenty two-way alphanumeric pagers, which it distributed to its employees, including members of the Ontario Police Department Swat Team, Sergeants Quon and Trujillo. The case demonstrated that text messages were transmitted and stored on equipment owned by the vendor, Arch Wireless.

Employer will need a warrant or employee's permission to review text messages.

While the City had no policy specifically addressing text messages, it did have a written policy that generally covered "Computer Usage, Internet and E-Mail" use. As is the case with many employers, the policy said any personal use of City equipment was a violation of City policy and would subject the employee to disciplinary action. It said any Internet or email sent through the employer's system was NOT confidential, and any such information is "considered City property."

The case differentiated between communication that is stored on an employer's equipment and that stored on equipment owned by the employer's vendor. While the employer may have a right to review messages stored on its own equipment, according to this new ruling, it will need either a warrant or the employee's permission to review messages stored on a vendor's equipment. So, if the employer doesn't run its own text messaging service, it may well have to adjust its policy about such things.

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Act in 1947, "protects from National Labor Relations Board (NLRB) regulation noncoercive speech by both unions and employers about labor organizing." The opinion goes on to say, "Congress' express protection of free debate forcefully buttresses the preemption analysis in this case. California's policy judgment that partisan employer speech necessarily interferes with an employee's choice about union representation is the same policy judgment that Congress renounced when it amended the NLRA to preclude regulation of noncoercive speech as an unfair labor practice."

Therefore, California's attempt to prevent employers from speaking against union organizing efforts has been blocked. Even if the state does business with an employer, that employer has federally provided rights to free speech in the union organizing debate.

Get a copy of the Court's opinion at: http://www.supremecourtus.gov/opinions/07pdf/06-939.pdf
SOURCE: Chamber of Commerce of the USA v. Brown, U.S. No 06-939, June 19, 2008

New Format for Our "Special Reports"

This issue marks a new distribution process for our newsletter. We have been publishing this newsletter since 1987. It began on paper, mailed with U.S. postage stamps. A number of years ago, we began email distribution of the newsletter in plain text format.

Until recently, sending plain text has been acceptable. We even received a majority of votes from you, our readers, in last year's survey indicating you prefer receiving plain text.

Since then, some things have changed. Many more people are using hand-held, portable devices that have difficulty downloading large files, and perhaps most importantly, plain text is being formatted and reformatted as it is processed by various email programs. So, it has turned out that what we send out doesn't always arrive in the same format as when it left us. That can be confusing, irritating, and difficult.

Our solution is to send out a text message with a link to the PDF file you can download at your leisure, at a machine that has capacity to handle PDF documents. We expect each PDF file to be from 100 KB to 150 KB in size. You will even be able to read the document on your portable book reader. Adobe Systems offers FREE copies of its **Adobe Reader** at http://www.adobe.com/ . Be sure to select the one that is appropriate for your operating system.

It is with great pleasure that we present our very first edition of *Special Reports for HR Professionals* in the new PDF format. We hope you continue to find the content worthwhile. Your feedback is always welcome.

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against age discrimination in employment complaints, because it used reasonable factors other than age to make its decisions about which individuals would be subject to layoff. The U.S. Supreme Court, in an opinion written by Justice Souter following its 7 to 1 decision, said, "An employer defending a disparate-impact claim under the ADEA [Age Discrimination in Employment Act] bears both the burden of production and the burden of persuasion for the "reasonable factors other than age" (RFOA) affirmative defense..."

If you create a lay off system that uses factors other than age in decision making, be sure you are able to PROVE that those factors are in fact reasonable given the circumstances. The employer has the burden. That is now clear. Be sure your attorney sits on the committee that approves your layoff procedures and the data analysis done to support them.

For a copy of the Court's opinion, go to:

http://www.supremecourtus.gov/opinions/07pdf/06-1505.pdf

SOURCE:

Meacham v. Knolls Atomic Power Laboratory, U.S. No. 06-1505, June 19, 2008

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In this situation, if you are within the jurisdiction of the 9th
Circuit, your attorney is your best friend and "go to" expert.

For a copy of the opinion go to:
http://www.ca9.uscourts.gov/ca9/newopinions.nsf/D2CDDB4098D7AFB28825746C0048ED24/$file/0755282.pdf?openelement

[SOURCE: *Quon v. Arch Wireless Operating Company, Inc.*, U.S.
Court of Appeals for the 9th Circuit, No. 07-55282, June 18,
2008.]

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