

Recent Seventh Circuit Court of Appeals, Illinois Appellate Court Decisions and Their Effect on Employment Law

Recent Seventh Circuit Case

In late March 2016, the Seventh Circuit Court of Appeals underlined its 1997 ruling in *Matthews v. Commonwealth Edison Co.*, in which it found that termination of employment for low performance scores which were a consequence of a disability did not constitute a violation of the Americans with Disabilities Act (ADA).

Steven Hill and Sean Roberts initially applied for firefighter positions with the City of Chicago in 1995. Neither were hired because of their examination scores on a pre-employment exam. Hill and Roberts joined a class action of 6,000 other similarly situated African-American applicants who were denied employment based on their examination scores. The court in the *Lewis v. City of Chicago* held that the examination process violated Title VII. The *Lewis* Court ordered the city to hire 111 of the class members and specified a four-step hiring process, which included a background investigation, physical abilities test, drug screen, and medical examination. An applicant was required to pass these tests before the City of Chicago would offer employment as candidate firefighters.

Hill and Roberts were among the class members to be considered for the firefighter positions. Each successfully completed the testing requirements and were offered employment conditioned on their completion of the medical screening. However, Hill and Roberts' medical screening revealed a number of health issues. Hill and Roberts provided additional information to the City of Chicago but neither were hired.

Shortly thereafter, Hill and Roberts filed suit against the City of Chicago for discrimination under the ADA (*Hill and Roberts v. City of Chicago*). Both men claimed that the city did not hire them on the basis of their perceived disabilities. Both men complained that the tests and records requests required by the city were caused by their disabilities and the delay

associated with these requests prevented them from being hired. The trial court dismissed the plaintiffs' claims for failure to state a claim. Hill and Roberts appealed.

The Seventh Circuit affirmed the trial court. According to the Seventh Circuit, Hill and Roberts "allege that the city failed to hire them not because of their disabilities, but rather due to the extensive medical requests that were a *consequence* of their disabilities." Citing *Matthews* as being indistinguishable, the Seventh Circuit held that Hill and Roberts failed to demonstrate causation.

The impact on performance as it relates to disabilities is a concept that arises often. The import of *Matthews* and now *Hill and Roberts v. The City of Chicago* should not be lost on human resource managers or other employment decision makers. Provided that the decision to terminate an employee is not based on the employee's disability, but rather on the consequence of the disability (i.e. absenteeism, poor performance), an employee is unlikely to be able to show causation for any claim under the ADA.

Before making a termination decision, you should consult with counsel. The attorneys at Swanson, Martin & Bell, LLP are available to discuss this decision and any other questions that you may have regarding employment decisions.

TRO decision – Illinois Appellate Court

Recently, the Illinois Appellate Court in *Bridgeview Bank v. Meyer* made important practical and procedural findings when it upheld a lower court's decision to deny a motion for a temporary restraining order (TRO) to enforce a restrictive covenant agreement involving the alleged contacting of customers and divulging of confidential information.

In short, the Appellate Court determined that:

1. On a TRO motion the plaintiff cannot submit evidence to the court outside its

verified complaint and affidavits. A defendant cannot submit counter-affidavits or a counterclaim at the TRO stage. A plaintiff also cannot add new evidence at the TRO hearing; and

2. The complaint at the TRO stage must contain well-pled facts to support injunctive relief, as opposed to nonspecific conclusory allegations.

In the underlying case the plaintiff bank had filed a verified complaint and affidavits to support its motion for a temporary restraining order. In response, the defendant attempted to contest the facts contained in the submissions made by the plaintiff by submitting an affidavit and a verified counterclaim. As the court made clear, on a motion for a TRO, *it has long been held that in the absence of a verified answer, the court should NOT receive or consider evidence or affidavits from the opposing party.*

The plaintiff also made a number of missteps in the court's eyes. At the hearing for the TRO, the plaintiff tried to present to the court copies of emails and a contact list that were not part of the verified complaint or supporting affidavits. The court, rightly, disallowed this evidence.

Aside from the procedural problems supporting the denial of a TRO, the court also noted that the underlying pleadings were substantively defective as well. Despite the plaintiff's broad assertion that it had developed "unique marketing strategies, processes and information," the plaintiff failed to describe, even generally, the nature of those strategies, processes or information or what made

them unique in the banking industry. The plaintiff also alleged that its customer relationships were "initiated, created, cultivated, nurtured and solidified at great expense" to the plaintiff. Again, the plaintiff failed to provide any specificity as to this allegation. Accordingly, the court determined this allegation to be an unsupported factual allegation and noted the plaintiff's failure to identify in its complaint even one customer or describe with any specificity the confidential information used or disclosed was "inexplicable."

There were also a number of additional pleading deficiencies that the plaintiff failed to overcome, including its description of its confidential information and its protectable interest in loyal customers. Each failure an additional reason for the court to base its denial upon.

In the end there are a number of practical and procedural takeaways from *Meyer v. Bridgeview*. The court – consistent with Illinois case law – has once again sounded a warning against broad definitions of confidential information. Moreover, the ruling should give parties seeking injunctive relief a virtual roadmap in order to draft the appropriate initiating pleading and to pursue its injunctive relief.

The attorneys at Swanson, Martin & Bell, LLP are ready to assist you and your business and can draft your employment related documents, including confidentiality provisions that withstand a court's scrutiny. We also have a wealth of experience prosecuting and defending non-compete claims.

Swanson, Martin & Bell, LLP recognizes Troy Sphar and Jeff Becker for their efforts in drafting this newsletter.

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