JDT2 Human Resources Task 1

Jonathan Horsman

Western Governors University

JDT2 Task 1

Course Mentor – Rebecca Melton and Jimmy Jewell

5/20/2013

Memorandum

To: Mrs. Julie Smith, CEO - XZY Toy Company

From: Jon Horsman – elementary division manager

Date: 5/19/13

Subject: How the company should respond to (Joe Wilson) employee's claim

---

As per your request, I have read over the information related to Mr. Joe Smith's resignation and his claim against the company. The following information is case law research pertinent to this situation and recommendation for your review.

Constructive Discharge relevant to this scenario

A constructive discharge occurs when an employee is legally justified in claiming that he or she was compelled to resign because the employer has made working conditions intolerable. (Hyman, 2013)

In this situation, Mr Wilson might have felt as though the company was unresponsive to his harassment complaint. If the company was unresponsive to his charge, the employee might be able to claim his resignation through constructive discharge. It appears in this situation the discrimination is based on religion. As a result, he was forced to resign since the new working shift schedule required him to work on religious holy days. He might have also noticed that the company's office staff schedule still remained Monday through Friday. Since the company is

growing rapidly and expanding, it appears that management was attempting to be effective by creating four 10 hour shifts on rotating shifts for the production staff.

The company should review his employment status to see if he was a contracted employee. If he was contracted to work certain shifts and times, the company making the those changes could offer him a case of constructive discharge. As a practical matter, constructive discharge are fairly difficult to prove, especially when the employee has an at-will employment relationship with the employer. (Dempsey & Petsche, 2007) It should be noted that most courts assess the intolerability of working conditions when they are considering whether there is reasonable evidence that the employer made the condition intolerable and the employee was compelled to resign. Title VII prohibits the employer from creating policies and procedures that result in an adverse impact on members of a protected class even if the policies and procedures are not intentionally discriminatory. (Teamsters v. United States, 1977)

Information about the charge of violating of the Title VII of the Civil Rights Act of 1964

The claim of violating his rights under the Title VII of the Civil Rights Act of 1964. This employee might have requested a shift change and most likely did not get the satisfied response from the company. If the company knew about this employee's religion and the days off need to observe their religious holy day or holy days, the company could be in violation of the Civil Rights Act of 1964. The Civil Rights Act of 1964 applies to the employment decisions. It mandates that employment decisions not be based on race, color, religion, sex or national origin. (U.S. Equal Employment Opportunity Commission) In this scenario, the company is being charged with discrimination by religion. However, the courts have expanded and grown this law to the protected class. The protected class is the special protection for groups of people who

have suffered discrimination in the past. The company also needs to be careful about disparate treatment so that the employee/employees don't feel they are treated differently. It should be mandatory that all employees learn about the Title VII of the Civil Rights Act of 1964. An employer is required to reasonably accommodate the religious belief of an employee, unless doing so would impose an undue hardship (U.S. Equal Employment Opportunity Commission). The education of all employees about this act can increase awareness and sensitivity towards other employees. This can also eliminate the second type of discrimination called Adverse Impact. Adverse Impact could be a company's set standards that unknowingly apply to applicants that could be eliminating the opportunities for some protected classes.

Recommendation on how the company should respond to the employee's charge of constructive discharge

The Company should look at "The Reasonable Person Test". There are two approaches to determine the validity of the plaintiffs' claims. The majority approach holds that an employee has been constructively discharged if an employer's discriminatory acts result in working conditions so in-tolerable that a reasonable person in the employee's position would feel compelled to resign. (Finnegan, 1986) There is also the minority approach where proof must be shown by the plaintiff. The minority approach requires the plaintiff to show not only that working conditions were so in-tolerable that a reasonable person would feel compelled to resign, but also that the employer created those conditions with the specific intent to cause the employee to resign (Finnegan, 1986)

This test was developed by the Fifth Circuit. It initially placed a significant weight on the employer's intent. If the company makes the working conditions so intolerable that the employee is forced into an involuntary resignation then the company has created a situation of constructive discharge. To correct this problem, the company needs to make sure that employee is not subjected to the following: the continuing harassment, given onerous job duties, forced to work face to face with an alleged antagonist or given a severe demotion. An emphasis must be placed on making sure that the employee can't show that working conditions were so intolerable that they were compelled to resign. Also, the company needs to be sensitive to promotions and if there is a deliberate effort by managers to suppress certain groups. Additionally, the company can't fire an employee on the basis of their union membership. Carefully attention to discrimination that could exist in management and supervisory positions, where an employee is not given the same fair treatment for advancement. If a position is untenable for an employee because they were denied equal status this company could be found guilty of constructive discharge. This company needs to make sure its policy is never to intend for the employee to quit their position or make the employee's conditions intolerable to the point of resignation.

The company has courses of action that can address the issue of constructive discharge to avoid legal issues around the Title VII of the Civil Rights Act of 1964. This company can contest the charges but cost of litigation and the money associated to process is not the best use for all parties and the same solution can be achieved with mediation.

The company should follow the recommended response to this claim by using the mediation and a conciliation technique. We recommend a trained mediator who will conduct a

neutral meeting with parties. This Mediator should use persuasion and people skills to facilitate a working dialogue. The Mediator can use their experience and expertise to suggest an amicable solution that is agreeable to all parties. This intervention technique recommended is conciliation. With both the Constructive Discharge Conciliation and Constructive Discharge Mediation, it allows parties to maintain civil relationships while creating the greatest opportunity for creative problem solving.

It should be shown, XYZ Toy Company has a tradition with treating all employees with respect and dignity. Our company values all of our members, employees and our working community. All though, the company does admit it could have done a better job of communicating the company changes in scheduling to its employees, it feels as though there was never any wrong doing.

Here are three legal references that will support our recommendation for handling this employee's charge of constructive discharge.

The first example is how our company was never given the opportunity to engage in an interactive process with employee. This company is always determined to give a reasonable accommodation and acceptable solution to any scheduling conflict. If Mr. Wilson had contacted us before he resigned, this company would have acknowledged his religious requirements. The following is an example of case where an employee failed to inform their employer of their beliefs in regards to their work schedule. A review of the record shows that Blakely did little to acquaint Chrysler with his religion and its potential impact upon his ability to perform his job. (Chrysler Corp v. Mann, 1977)

Our company understands that we are to reasonably accommodate the religious practices of an employee or prospective employee, unless the employer demonstrates that accommodation would result in undue hardship on the conduct of its business. If in granting that reasonable accommodation would create undue hardship on the company, proof must be shown. (Civil Rights Act of 1964 – CRA - Title VII Equal Employment Opportunities - 42 US Code Chapter 21, 2008).

Another legal reference is Tepper v Potter case. Tepper was required to show that he: 1) his sincere religious belief conflicted with the companies employment requirements; 2) he informed the company about the conflict; and 3) the company had discharged or disciplined for failing to comply with the conflict with the company's employment requirement.

The appellate court reviewed each requirement necessary to show a prima facie case on Tepper's accommodation claim, and ultimately concluded that Tepper could not establish the third requirement, i.e. that "he was discharged or disciplined for failing to comply with the conflicting employment requirement." (MARTIN TEPPER v JOHN E.POTTER, Postmaster General, 2007)

The third legal reference is a case about a cadet in the Washington State Police Academy. His religious beliefs contradicted the requirements of the Academy of saluting the flag and taking an oath to the United States and to the State. He undisputedly informed the Academy of his conflicts between his religious beliefs and his duties as a cadet. He contested by saying he could not salute the flag or take an oath of allegiance to a government because of his religious beliefs.. The Academy did not threaten to discipline Lawson for refusing to comply. The Academy confirmed that he voluntarily resigned. He said it felt he was constructively discharged because they did not talk him out of resigning. Given these facts, the court found that

a reasonable person would not have felt compelled to resign. (LAWSON v. WASHINGTON, 2002)

This company should try reach out to Mr. Wilson. The company should do the following things. The company can offer Mr. Wilson's position back to him, work on the scheduling that benefits him and the companies work time by creating a possible non-rotating shift or offer a job position that has a set schedule, give him back pay for the time that was lost, implement open channels of direct communications of issues that could address potential problems for the whole company. (Finnegan, 1986)

Recommend steps to avoid legal issues

Even though, the company can not prevent the employee from suing, there are steps the company can take to reduce the number of incidences of constructive discharge claims. Establish a formal channel of communications for grievances with how the process works and encourage employees to use it. Encourage all employees to communicate with their issues. This will give the employees a way to air out their complaints. If the employee doesn't utilize this communication system, it will count against them if they escalate this issue beyond the company. The company policy should be to deal with all employees fairly and honestly. The company should not encourage making the employee's job miserable in order for them to quit. Employees should be required to give 15 days in written notice of issues and problems plus another 15 days for management to make the corrections or address the issue. Quarterly educational training required by all staff, management and employees to ensure that everyone is aware of the Title VII and other human resource laws & policies.

References

Chrysler Corp. v. Mann, No 76-1196 (UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT September 14, 1977).

Commission, U. E. (n.d.). *Religious Discrimination*. Retrieved from U.S. Equal Employment Opportunity Commission: http://www.eeoc.gov/laws/types/religion.cfm

Dempsey, G. E., & Petsche, J. N. (2007). *Metropolitan Library System.* Retrieved from Metropolitan Library System: http://www.mls.lib.il.us/ennounce/librarylaw/librarylaw_08_06.pdf

Finnegan, S. (1986, Spring). Constructive Discharge Under Title VII and the ADEA. *The University of Chicago Law Review Vol. 53, Iss. 2;*, pp. 561-580. Retrieved from http://wgu.docutek.com.wguproxy.egloballibrary.com/eres/download.aspx?docID=438&shortname=mba_jdt2_constructive_discharge.pdf

Hyman, J. (2013, april 4). *Constructive Discharge*. Retrieved from Business Management Daily : http://www.businessmanagementdaily.com/?s=constructive+discharge

LAWSON v. WASHINGTON, No. 00-35458 (United States Court of Appeals,Ninth Circuit. July 12, 2002).

MARTIN TEPPER v JOHN E.POTTER, Postmaster General, No. 06-4182 (Appeal from the United States District Court for the Northern District of Ohio at Cleveland. October 15, 2007).

School, C. U. (n.d.). *Legal Information Institute*. Retrieved from http://www.law.cornell.edu/: http://www.law.cornell.edu/cfr/text/29/1605.2

Teamsters v. United States, 431 U.S. 324 (1977) No. 75-636 (U.S. Supreme Court May 31, 1977).