

WISCONSIN

LINDNER & MARSACK, S.C. PREVAILS IN HARASSMENT, DISCRIMINATION AND RETALIATION CASES IN FEDERAL COURT

LINDNER
&
MARSACK
ATTORNEYS AT LAW

A recent addition to the The Gavel, Lindner & Marsack, S.C. handles Employment Practice Liability Insurance claims and Worker's Compensation defense matters in addition to other employment litigation, labor relations, collective bargaining and workplace injury defense matters. The attorneys at Lindner & Marsack, S.C. are known for getting results through negotiation and a multi-layered defense targeted toward improving future settlement opportunities. When those resolution efforts are not successful, we deliver defense judgments. These cases highlight common examples of the types of claims handled for our carrier partners and clients alike. The defense of both cases was led by Daniel Finerty.

In the first matter, Lindner & Marsack, S.C. secured summary judgment in the Eastern District of Wisconsin on behalf of a cleaning contractor client which dismissed a former employee's alleged violations of Title VII of the Civil Rights Act of 1964. The employee claimed Title VII was violated because of failure to accommodate religious beliefs and when she was allegedly subject to discrimination because of her race and religion, retaliation and a hostile work environment.

After filed, Finerty obtained a stipulation from Plaintiffs' counsel to voluntarily dismiss the former employee's constructive discharge claim that was never alleged in any Equal Employment Opportunity Commission ("EEOC") charge, saving the client the motion to dismiss-related costs. Also, after mandatory initial disclosures and discussion, no deposition or discovery costs were incurred, rare in employment litigation, to defend the case

more economically without increased risk.

After briefing, and it accepted the parties' stipulation to dismiss the constructive discharge claim, the Court dismissed all the former employee's remaining claims finding she "has clearly not met her burden and ultimately has not made out a prima facie case for religious discrimination," among other things. *Norma J. Coleman v. Eagle Enterprises, Ltd.*, Case No. 19-CV-801-JPS, *8 (E.D. Wis. Sept. 23, 2020). No appeal was filed. Eagle Enterprises, Ltd. was also represented by Lindner & Marsack, S.C.'s Oyvind Wistrom and Samantha Wood, who ably assisted Finerty in the effort.

In the second matter, Lindner & Marsack, S.C. successfully defended an administrative law judge's decision in our automobile dealership client's favor that the dealership had reasonable cause for economic and other circumstances not to rehire an employee who suffered a worker's compensation injury. The former employee alleged a work injury occurred while lifting a boat alone at the dealership, which led to a back injury and fusion surgery that prevented the employee from working for roughly 14 months.

The employee filed an application for worker's compensation benefits including a statutory Unreasonable Refusal to Rehire claim against the dealership under Wis. Stat. §102.35(3). To prove this case, the employee must make a prima facie showing that, after the employee sustained a compensable injury, rehire was denied or a discharge occurred. If so, the burden then shifts to

the employer to show that the employee was discharged for reasonable cause.

After hearing, the Administrative Law Judge found the dealership's testimony as to the business need to fill the position was credible, as the employee's department played an important role in the financial integrity of the business and the fact that its staffing was effectively cut in half (due to the manager's on-going medical issue), with a concomitant negative impact on the dealership's ability to generate fixed income, established a legitimate business reason or reasonable cause for replacing the employee. In addition, the employee failed to show that there was any suitable work available when he was released to return with restrictions or that he would have been able to perform the prior position due to the post-accident permanent restrictions that prevented him the lifting required by the position.

After the decision was appealed, Finerty successfully defended two levels of appellate review and a decision in the third level is pending. Additional information is available about this matter upon request.

While Employment Practice Liability Insurance carriers generally provide coverage for discrimination, harassment and retaliation claims, cases like Coleman, EPLI policies also cover employment-related claims arising under state law. In this regard, Lindner & Marsack, S.C. successfully defends employers and their carrier partners in these claims every day.



DANIEL FINERTY

414.226.4807

dfinerty@lindner-marsack.com