Title VII Legal Update 2014

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Employment Agencies

- Covington v. Int'l Ass'n of Approved Basketball Officials, 710 F.3d 114 (3d Cir. 2013).
  - Plaintiff, a female basketball official who was denied officiating opportunities because of her sex, filed suit against the local chapter of a multi-school athletic board alleging that it acted as an employment agency.
  - The board acknowledged that it was an "employment agency" under Title VII, but insisted that no employment relationship existed between plaintiff and the local school district which used officials' services.
  - Held: The school district was an employer because it paid officials and determined game times and locations. Therefore, the board acted as an employment agency by assigning officials.

Volunteers

- Juino v. Livingston Parish Fire Dist. No. 5, 717 F.3d 431 (5th Cir. 2013).
  - Volunteer municipal firefighter was not an employee for purposes of her Title VII harassment claim, even though the district paid her compensation of $78, provided life insurance, training, a badge, and a uniform.
  - The Fifth Circuit, which applied the threshold-remuneration test to examine the plaintiff and district's relationship, concluded that the benefits plaintiff received were "purely incidental to her volunteer service" and that plaintiff was not an "employee" for Title VII purposes.

EEOC Standing

- EEOC v. Grane Healthcare Co., 2014 WL 896820 (W.D. Pa. Mar. 6, 2014).
  - During application process, defendant required applicants to submit to medical examination and to complete a form which asked about medications in violation of the ADA.
  - The court rejected defendant's assertion that EEOC lacked standing to sue because applicants were not "injured," concluding that unlike a private party, the United States sustains injuries to its sovereignty from any violation of its laws.
  - Likewise, the court rejected defendant's argument that its ADA violations were "merely technical." Instead, the court granted EEOC's motion to enjoin defendant's formalized process of unlawful pre-offer solicitations and examinations.

Sex Discrimination

- Dillon v. Miss. Dep't of Corrs., 2013 WL 3712432 (S.D. Miss. July 12, 2013).
  - Plaintiff expressed interest in transferring to a vacant probation officer position.
  - Supervisor refuses because "a girl shouldn't be down in Walthall County because they would be alone in that office."
  - Supervisor then asks whether Plaintiff's husband was interested in the job.

Sex Discrimination (cont.)

- Dillon v. Miss. Dep't of Corrs., 2013 WL 3712432 (S.D. Miss. July 12, 2013) [continued].
  - Agency claims that female probation officers cannot work in one-person offices because they would be expected to drug test a predominantly male clientele, and may need to work with angry inmates or work at night.
  - However, male officers in one-person offices regularly drug test female probationers with the help of female volunteers, and the agency failed to explain why female officers would be unable to perform these responsibilities, or identify any circumstances that would prevent female officers from seeking male volunteer assistance when necessary.
  - The court concluded that the agency failed to establish that sex was a BFOQ for one-person probation officer positions at the summary judgment stage.

Sex Discrimination (cont.)

- Owens v. Jackson Cnty. Bd. of Educ., 2014 WL 1272868 (11th Cir. 2014).
  - Plaintiff, a female school teacher, established a genuine issue of material fact when she alleged that a school district superintendent demonstrated bias against female candidates for administrative vacancies.
  - On multiple occasions, the superintendent told plaintiff that "he did not want females in administrative positions," because they were "too emotional" and that he "had a lot less problems out of male principals."
  - Eleventh Circuit affirmed in part a denial of summary judgment for the employer.

Sex Discrimination (cont.)

- Tabor v. Hilty, Inc., 703 F.3d 1206 (10th Cir. 2013).
  - During an interview for promotion to a managerial position, a division manager told the female plaintiff that as a woman, she would need to work harder to learn the equipment/tools well enough to demonstrate them for customers or she would be "chewed up and spit out."
  - The division manager also expressed concern that the position's travel requirements would present issues for the plaintiff because she was a wife and mother.
  - The Tenth Circuit reversed the district court, holding that the division manager's statements were made during the interview and shortly before the decision not to promote the plaintiff, thus constituting direct evidence of gender discrimination.

Sex Discrimination (cont.)

- Geraty v. Village of Antioch, 941 F.Supp. 2d 918 (N.D. Ill. 2013).
  - Plaintiff's non-selection for a vacant sergeant position may have been discriminatory where her interview score could have been based upon her sex.
  - Plaintiff was repeatedly asked about her family obligations, she received lower scores than male applicants who were disruptive and unqualified, and the Police Chief demonstrated animus toward plaintiff and other female officers.
  - Police Dept.'s summary judgment motion was denied.

Pregnancy Discrimination

- Enforcement Guidance on Pregnancy Discrimination and Related Issues: http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm
- Questions and Answers: http://www.eeoc.gov/laws/guidance/pregnancy_qa.cfm
- Fact Sheet for Small Business: http://www.eeoc.gov/eeoc/publications/pregnancy_factsheet.cfm

Pregnancy Discrimination (cont.)

- Updates guidance issued in 1983 in light of changes in the law.
- Charges alleging pregnancy discrimination have increased significantly since 1997.
- We see lots of examples of egregious pregnancy discrimination even though the Pregnancy Discrimination Act (PDA) has been the law since 1978.
- Changes to the definition of “disability” in the ADA as the result of the ADA Amendments Act of 2008 make it easier for individuals with pregnancy-related impairments to show they have covered disabilities.

Pregnancy Discrimination (cont.)

- Guidance explains that:
  - Discrimination based on pregnancy, childbirth, and related medical conditions is sex discrimination.
  - The PDA covers discrimination based on current pregnancy, past pregnancy, and potential pregnancy.
  - Medical conditions related to pregnancy include lactation.
  - Women affected by pregnancy, childbirth , and related medical conditions must be treated the same as individuals not so affected but who are similar in their ability or inability to work, without distinctions based on the cause of the limitation.

Pregnancy Discrimination (cont.)

- Guidance explains that:
  - If employer provides light duty to workers injured on the job, it generally must do so for pregnant workers who are similar in their ability or inability to work.
  - Pregnant employees may not be forced to take leave if they are capable of performing the functions of their job.
  - Leave for pregnancy, childbirth, and related medical conditions must be provided to the same extent as employer provides medical leave for other reasons.
  - Parental leave (leave to care for and bond with a child) must be provided to men and women on an equal basis.

Pregnancy Discrimination (cont.)

- ADA Coverage –
  - Although pregnancy itself is not a disability, pregnancy – related impairments can be disabilities, particularly since enactment of the ADA Amendments Act.
  - Examples of pregnancy-related impairments that may be disabilities include: gestational diabetes; preeclampsia; pregnancy-related anemia, carpel tunnel syndrome, and sciatica; abnormal heart rhythms; depression; pelvic inflamation that limits walking; impairments of the uterus and cervix that affect reproductive functions.

Pregnancy Discrimination (cont.)

- Reasonable accommodations that employees with pregnancy-related disabilities may need include:
  - Redistributing marginal tasks (e.g., a marginal task hat requires heavy lifting)
  - Modifying a work schedule (e.g., someone with severe morning sickness)
  - Modifying workplace policies (e.g., permission to keep a water bottle At a work station where this is generally prohibited)
  - Telework for someone on bed rest where feasible
  - Additional leave
  - Temporary reassignment to light duty position

Pregnancy Discrimination (cont.)

- Ingarra v. Ross Educ., LLC, 2014 WL 688185 (E.D. Mich. Feb. 21, 2014).
  - After beginning IVF treatment, plaintiff was demoted from lead dental instructor to teaching assistant, and instructed to sit while working "because [she was] being pumped with so many hormones."
  - Day after plaintiff had a miscarriage, she was demoted from full-time to part-time work.
  - Two months later, her supervisor informed her that she was "not a good cheerleader in the classroom and more focused on babies." Her supervisor also asked whether she planned to receive further medical treatment "regarding her desire to bear children," and asserted that she was emotionally unstable to teach because of the increase in hormones from IVF and her pregnancy.
  - The plaintiff was eventually terminated.

Pregnancy Discrimination (cont.)

- Latowski v. Northwoods Nursing Ctr., 549 F. App'x 478 (6th Cir. 2013).
  - Certified nursing assistant (CNA) alleged that she was discriminatorily discharged after informing her employer of a pregnancy-related 50-pound lifting restriction.
  - The employer said plaintiff could no longer work because it only accommodated restrictions resulting from work-related incidents.
  - To evaluate whether plaintiff made a prima facie case, the court examined whether the plaintiff's qualifications met employer's expectations before and independent of the events that led to the adverse action.

Pregnancy Discrimination (cont.)

- Latowski v. Northwoods Nursing Ctr., 549 F. App'x 478 (6th Cir. 2013) [continued].
  - Here, the employer failed to give evidence that plaintiff's pre-pregnancy job performance was unsatisfactory and suggested that the employer's nondiscriminatory reason may be pretextual:
    - "[A] reasonable jury could easily conclude that [the] business decision to implement a policy terminating otherwise qualified workers whose doctors imposed any restrictions arising from non-workplace injuries, even if those restrictions do not limit the employees' ability to competently perform their jobs – is so lacking in merit as to be a pretext for discrimination."
  - The court reversed summary judgment for the employer.

Pregnancy Discrimination (cont.)

- Lara-Woodcock v. United Airlines, Inc., 2013 WL 6097017 (N.D. Ill. Nov. 20 2013).
  - Airline mechanic plaintiff filed suit against her former employer alleging sex and pregnancy discrimination after she was placed on unpaid furlough due to her restriction.
  - The court found that although there was no specific lifting requirement in the plaintiff's job description, some lifting was required as a regular part of the job of maintaining vehicles and changing heavy tires.
  - Summary judgment granted for employer: requiring that the plaintiff take unpaid medical leave due to a lifting restriction was not pregnancy discrimination where lifting was required as a regular part of plaintiff's job, and where the employer did not make special arrangements for non-pregnant workers who requested light-duty assignments.

Pregnancy Discrimination (cont.)

- Ames v. Nationwide Mut. Ins. Co., 2014 WL 2884081 (8th Cir. June 26, 2014).
  - Around the time she gave premature birth, an insurance loss-mitigation specialist alleged that her supervisor constructively discharged her, violating Title VII, when he:
    - Made discriminatory remarks about her pregnancy;
    - Insisted that she return to work due to an FMLA miscalculation;
    - Trained a temporary employee to fill her position;
    - Denied her immediate access to a lactation room;
    - Threatened her with discipline if she did not work overtime;
    - Refused to help her locate a temporary place to lactate;
    - Denied her the ability to lactate more than 5 hours a day upon her return to work, causing her tremendous physical pain.

Pregnancy Discrimination (cont.)

- Ames v. Nationwide Mut. Ins. Co., 2014 WL 2884081 (8th Cir. June 26, 2014) [continued].
  - The Eighth Circuit disagreed, affirming summary judgment for the employer and concluding that no constructive discharge took place. The court noted that the employer:
    - Tried to ameliorate the impact of its FMLA error;
    - Encouraged the plaintiff to take the leave to which she was entitled;
    - Gave the plaintiff an extra week of maternity leave;
    - Denied immediate access to a lactation room only because she had not completed the paperwork to gain electronic access;
    - Attempted a temporary fix by allowing Plaintiff's use of the wellness room for lactation.

Gender Identity

- Finkle v. Howard County, Md., __ F. Supp. 2d __, 2014 WL 1396386 (D. Md. April 10, 2014).
  - Allegations that plaintiff was discriminated against "because of her obvious transgendered status" raised a cognizable Title VII sex discrimination claim.
  - Held: "it would seem that any discrimination against transsexuals (as transsexuals) -- individuals who, by definition, do not conform to gender stereotypes -- is proscribed by Title VII's proscription of discrimination on the basis of sex as interpreted by Price Waterhouse.
  - Sex stereotyping is equally actionable whether it involves an insufficiently masculine man, an insufficiently feminine woman, or an inherently gender-nonconforming transsexual.

Sexual Orientation

- Terveer v. Billington, __ F. Supp. 2d __, 2014 WL 1280301 (D. D.C. March 31, 2014).
  - Title VII sex discrimination claims for denial of promotion and harassment because of non-conformance with sex stereotypes.
  - Held: Plaintiff's allegations were sufficient to allege sex discrimination, where he asserted that he is "a homosexual male whose sexual orientation is not consistent with the Defendant's perception of acceptable gender roles," that his "status as a homosexual male did not conform to the Defendant's gender stereotypes associated with men [at his workplace]," and "his orientation as homosexual had removed him from [his supervisor's] preconceived definition of male."

Racial Discrimination

- Shazor v. Prof'l Transit Mgmt., Ltd., 744 F.3d 948 (6th Cir. 2014).
  - Former CEO alleged discriminatory discharge based on her race and sex. Employer's proffered legitimate reason for the firing was that the plaintiff had lied on two occasions, a determination that was made after speaking with only one other person.
  - Employer invoked the "honest belief" doctrine, asserting that it could not be held liable if it had made a reasonably informed and considered decision before taking action, in "honest belief" that the plaintiff had made false statements.
  - Here, the employer's limited investigation did not establish sufficient facts about the plaintiff's statements and the employer failed to establish the honest belief doctrine.

National Origin Discrimination

- Batista v. DeGennaro, 2014 WL 1046735 (S.D.N.Y. Mar. 10, 2014).
  - Hispanic plaintiff alleged that she was constructively discharged on the basis of race and national origin after her employer unfairly disciplined her, wrote negative evaluations, and referred to her Dominican culture as an "inferior culture" that "did not belong to the American society."
  - The court denied employer's motion to dismiss: It was cumulatively "plausible that [the employer] intentionally, and on the basis of Plaintiff's race and national origin, made her work environment so intolerable that she was forced to quit."

National Origin Discrimination

- Garcia v. Garland Indep. Sch. Dist., 2013 WL 5299264 (N.D. Tex. Sept. 20, 2013).
  - A Hispanic former cook who lacked English fluency created a reasonable inference that she was subjected to national origin harassment with evidence that her supervisor prohibited employees from speaking Spanish in the kitchen, joked about the cook's mispronunciation of English words, and ridiculed her on a daily basis.
  - Though the employer argued that Spanish was not banned "as long as safety was not compromised," the court held that a genuine issue of material fact existed as to whether the supervisor "effectively instituted a 'blanket policy' prohibiting Spanish, without regard to safety issues."

Human Trafficking/National Origin

- EEOC v. Global Horizons, Inc., 2014 WL 1118009 (D. Haw. Mar. 19, 2014).
  - Defendant recruited impoverished, uneducated Thai workers who couldn't speak English, and had no family or contacts in the U.S. to do manual labor on various farms.
  - Thai workers were denied breaks, paid less than non-Thai workers, made to work less desirable and more demeaning jobs than non-Thai workers, forced to live in deplorable living conditions, and subjected to abuses on the farms, including physical violence, humiliation, heavy surveillance, and threats of being shot, deported, or arrested.
  - The court held that the defendant engaged in a pattern or practice of discrimination based on national origin and retaliation.
  - Del Monte, which operated one of the farms in which the workers were placed, settled for 1.2 million dollars.

Religious Accommodation

- Adeyeye v. Heartland Sweeteners, LLC, 721 F.3d 444 (7th Cir. 2013).
  - Plaintiff, who sought three weeks of unpaid leave for funeral rites in Nigeria following his father's death, could show his religious belief was "sincerely held" even though he described the rites themselves as his father's religious practice rather than his own.
  - "The protections of Title VII are not limited to familiar religions," and "[i]f the managers who considered the request had questions about whether the request was religious, nothing would have prevented them from asking [plaintiff] to explain a little more about the nature of his request… the law leaves ample room for dialogue on these matters."

Religious Accommodation (cont.)

- Adeyeye v. Heartland Sweeteners, LLC, 721 F.3d 444 (7th Cir. 2013) [continued].
  - Whether requests for unpaid leave for a religious observance pose an undue hardship depends on "the specific circumstances of the job and the leave schedule the employee believes is needed."
  - At the time of the leave request, many shifts at the factory where plaintiff worked were staffed by temporary workers; the company kept a ready list of temporary workers for these jobs who usually reported within an hour of the request.
  - In light of the high turnover, frequent use of temporary workers, and a ready supply of substitutes, a reasonable jury could find plaintiff's request did not pose an undue hardship.

Religious Accommodation (cont.)

- EEOC v. Abercrombie & Fitch Stores, Inc., 731 F.3d 1106 (10th Cir. 2013).
  - Applicant for a retail sales position who wore a headscarf pursuant to her Muslim religious beliefs, was given a lower score on the "appearance" segment of a job interviewing rating system because the headscarf would conflict with the employer's "Look Policy," and not hired.
  - Held: Employer was on insufficient notice that the headscarf was worn for religious reasons, notwithstanding testimony by a hiring official that he assumed her headscarf to be a religious observance.

Religious Accommodation (cont.)

- EEOC v. United Galaxy, Inc., 2013 WL 3223626 (D.N.J. June 25, 2013).
  - Plaintiff, an observant Sikh who wore a turban and an uncut beard, alleged he was not hired for an automobile sales position because he would have needed an exception to the employer's "no-beard" policy as a religious accommodation.
  - Rejecting employer's argument it was not on notice of the need for accommodation, the court cited evidence the employer knew or perceived plaintiff's beard to be a Sikh religious practice.

Religious Accommodation (cont.)

- Marmulszteyn v. Napolitano, 523 Fed. Appx. 13 (2d Cir. 2013) (unpublished).
  - Employer accommodated a Hasidic Orthodox Jew, whose faith precluded him from working on Saturdays until an hour after sunset, by offering that on those occasions he was assigned to a Saturday morning shift, he could switch to a shift beginning at 10:00 pm.
  - Even though not the accommodation the employee preferred, it was a reasonable accommodation that eliminated the employee's religious conflict, so it complied with Title VII.

Religious Accommodation (cont.)

- Tagore v. United States, 2013 WL 6008901 (5th Cir. Nov. 13, 2013).
  - Pursuant to her Sikh religious beliefs, an IRS employee was baptized and began wearing the five Sikh articles of faith, including a kirpan. She was terminated when accommodation of the kirpan was deemed an undue hardship due to a federal statute prohibiting "dangerous weapons" in any federal building.
  - Although the law had an exception for a pocket knife with a blade of less than 2 ½ inches, plaintiff believed in wearing a kirpan with a blade of at least three inches.

Religious Accommodation (cont.)

- Tagore v. United States, 2013 WL 6008901 (5th Cir. Nov. 13, 2013) [continued].
  - Held: Summary judgment for the IRS affirmed on denial of religious accommodation claim:
    - IRS had no authority to determine or override the security requirements for federal buildings.
    - There was no federal building to which plaintiff could be transferred to which the requirements did not apply, and a permanent flexiplace arrangement was inconsistent with plaintiff's job duties.
    - Employer need not violate another law in order to accommodate employee religious beliefs; plaintiff's additional proposed accommodation of wearing a dulled kirpan blade posed an undue hardship because the inquiry required by security officers would be "time-consuming, impractical, and detrimental to the broad vigilance required at the entrance to public offices."

Religious Accommodation (cont.)

- Religious Garb and Grooming in the Workplace: Rights and Responsibilities, http://www.eeoc.gov/eeoc/publications/qa_religious_garb_grooming.cfm (3/6/2014).

- Fact Sheet on Religious Garb and Grooming in the Workplace: Rights and Responsibilities, http://www.eeoc.gov/eeoc/publications/fs_religious_garb_grooming.cfm (3/6/2014).

"Ministerial Exception"

- Hough v. Roman Catholic Diocese of Erie, 2014 WL 834473 (W.D. Pa. March 4, 2014).
  - Plaintiffs, three Catholic school teachers, brought age discrimination claims.
  - Held: Even a parochial school cannot obtain summary judgment based on ministerial exception based on merely its overall mission or the argument "that all teachers are ministers." Actual evidence regarding plaintiffs' requisite training, functions, duties, and other circumstances of employment is needed to determine if the "ministerial exception" applies.
  - The Hosana-Tabor analysis must be "based on a well-developed record with evidence of [p]laintiffs' job duties and functions, as well as the duties currently performed by those who were hired in their stead."

Harassment

- EEOC v. Boh Bros. Construction, LLC, 731 F.3d 44 (5th Cir. 2013).
  - Jury verdict finding sex-discrimination in violation of Title VII upheld.
  - Much of the harassment took the form of anti-gay epithets and other abuse, but evidence proved it was motivated not by sexual orientation but rather by sex stereotypes, i.e., by the harassers' view that the harassed employee was insufficiently masculine.

Harassment (cont.)

- Freeman v. Dal-Tile Corp., 2014 WL 1678422 (4th Cir. April 29, 2014).
  - Receptionist had to interact daily with an independent sales representative (not an employee) who frequently made racist, sexist and other offensive comments to the plaintiff and to others within her hearing.
  - The plaintiff complained to her boss repeatedly, and eventually took a medical leave of absence due to depression and anxiety because of the conduct, but the employer did nothing to address the problem.

Harassment (cont.)

- Freeman v. Dal-Tile Corp., 2014 WL 1678422 (4th Cir. April 29, 2014) [continued].
  - Claims of harassment by an independent contractor analyzed in the same way as claims of co-worker harassment.
  - Court stated that "an employer is liable under Title VII for third parties creating a hostile work environment if the employer knew or should have known of the harassment and failed 'to take prompt remedial action reasonably calculated to end the harassment.'"

Harassment (cont.)

- Paasewee v. Action Group, Inc., 530 F. App'x 412 (6th Cir. 2013).
  - Plaintiff of African origin, who worked as a grinder, alleged that he was subjected to racial harassment by a white coworker who, among other actions, derided the plaintiff's support for Barack Obama during the 2008 election.
  - Employer contended that such conduct was politically motivated and not directed at the plaintiff because of his race, yet the court noted that the coworker called the plaintiff "boy," threatened his life, and told him that he should take Obama back to Africa to vote for him.
  - Held: a reasonable jury could conclude that the conduct was race-based.

Harassment (cont.) – Employer Liability

- Kramer v. Wasatch Cnty. Sheriff's Office, 743 F.3d 726 (10th Cir. 2014).
  - Female bailiff alleged that she was subjected to a hostile work environment when she was repeatedly sexually assaulted by another bailiff.
  - The alleged harasser managed Plaintiff's daily work performance; wrote her performance evaluations which could serve as the basis for promotion, demotion, or termination; and could recommend to the sheriff that any subordinate employee, including Plaintiff, be fired.

Harassment (cont.) – Employer Liability

- Kramer v. Wasatch Cnty. Sheriff's Office, 743 F.3d 726 (10th Cir. 2014) [continued].
  - Held: To qualify as an employee under Vance, an employee need not be empowered to take tangible employment actions directly. Instead, an employee that works closely with subordinates and has the "power to recommend or otherwise substantially influence tangible employment actions" also qualifies as a supervisor.
  - By providing for such reliance on the alleged harasser's input, the employer had effectively delegated to the alleged harasser the power to effectuate tangible employment actions.

Harassment (cont.) – Co-Worker

- Williams-Boldware v. Denton Cnty., Tex., 741 F.3d 635 (5th Cir. 2014), pet. for cert. filed (U.S. June 3, 2014).
  - African-American prosecutor alleged that a racial harassment incident occurred when a white ADA walked into his office to discuss a case involving an African-American woman who had desecrated a cemetery. The ADA told Plaintiff that the case "made him understand why people hung from trees" and made him "want to go home and put on his white pointy hat."
  - After Plaintiff informed the ADA that his comments were "inappropriate and upsetting," the ADA sent Plaintiff an emailed apology. Still upset, Plaintiff arranged a meeting with two managers and the ADA was later reprimanded and required to attend diversity training.

Harassment (cont.) – Co-Worker

- Williams-Boldware v. Denton Cnty., Tex., 741 F.3d 635 (5th Cir. 2014), pet. for cert. filed (U.S. June 3, 2014).
  - The Fifth Circuit reversed a jury verdict for the plaintiff, holding that the employer took prompt remedial action in response to the alleged racial harassment, thereby precluding liability.
  - Explaining that the adequacy of an employer's response depends on the particular facts of a case, the court noted that this case did not involve a "protracted outpouring of racially invidious harassment that required large-scale institutional reform." Here, the employer met its requirement to take prompt action to prevent the particular ADA and others from harassing the plaintiff.

Harassment (cont.)

- EEOC v. Red Lobster, (D. Md.) (suit filed 9/30/13).
  - EEOC alleged that the employer subjected a class of female employees to pervasive sexual harassment at its Salisbury, Maryland location when its culinary manager subjected female employees to longstanding unwelcome conduct, including pressing his groin against them, grabbing and groping them, and making sexually offensive comments.

Harassment (cont.)

- EEOC v. Wells Fargo, (D. Nev.) (suit filed 9/25/13).
  - EEOC alleged that a female service manager subjected four female bank tellers to graphic sexual comments, gestures, and images. The alleged harassment included invasive comments about their bodies and sex lives, inappropriate touching and grabbing, and suggestions that the female bank tellers wear sexually provocative clothing in order to attract or retain customers or to advance in the workplace.

Harassment (cont.)

- EEOC v. U-Haul, (W.D. Tenn. 9/24/13).
  - Respondent entered into a two-year consent decree requiring it to pay $750,000 to eight African-American current and former employees and to provide other relief to settle a race and retaliation discrimination lawsuit.
  - The settlement also requires U-Haul to conduct annual employee training regarding equal employment opportunity laws and to provide written reports to the EEOC on any future race discrimination complaints.

Retaliation

- Ray v. Ropes & Gray, LLP, 961 F. Supp. 2d 344 (D. Mass. 2013).
  - Plaintiff fired from his associate position at a law firm filed race discrimination charge with EEOC.
  - In response, employer refused to provide reference letters for the plaintiff, and gave the EEOC determination letter regarding his race discrimination claim to a news website for publication.

Retaliation (cont.)

- Ray v. Ropes & Gray, LLP, 961 F. Supp. 2d 344 (D. Mass. 2013) [continued].
  - Refusal to provide reference letters could be an "adverse action" for purposes of the retaliation claim, and employer's reason for refusing to provide the references – the belief that his race discrimination claim was "scurrilous" – could be viewed as a retaliatory reason by a jury.
  - Publicizing the EEOC determination letter could be an "adverse action." Even though there is no law requiring the employer to keep the letter confidential, "knowingly releasing publicly damaging information about the plaintiff 'would likely deter any reasonable employee from pursuing a complaint.'"

Retaliation (cont.)

- Travers v. Flight Servs. & Sys., Inc., 737 F.3d 144 (1st Cir. 2013).
  - Lead plaintiff in a FLSA class action by skycaps working for the employer.
  - The CEO of the company repeatedly yelled at the plaintiff's supervisor to "get rid of" the plaintiff, to "talk [the plaintiff] into dropping the lawsuit," and to complain about how much the plaintiff's lawsuit was costing the company.
  - The plaintiff was eventually fired.
  - Even though the CEO was not involved in the plaintiff's termination, the court explained that his animus could be imputed to the decisionmakers because the animus was expressed so strongly and repeatedly from the company's "apex," and a reasonable jury could find that subordinates fired the plaintiff to please "the king, so to speak."

Severance Agreements

- EEOC v. CVS Pharmacy, Inc., (N.D. Ill.) (suit filed Feb. 2014).
  - EEOC alleges that CVS's standard severance agreement constitutes a pattern or practice of interference with employees' Title VII rights.
  - The agreement requires release of "charges ... of any kind" and provides that the employee agrees not to accept any relief even if a court rules the waiver is unenforceable.