

More Lawsuits This Holiday Season?

Working Together

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Employers are acutely aware of the legal pitfalls that come with the holiday season. Office parties and alcohol are a potent recipe for bad judgment, and that bad judgment leads to harassment charges and lawsuits. Another common occurrence during the holiday season is the payment of discretionary bonuses to employees. Now, after the recent Second Circuit Court of Appeals decision in *Davis v. New York City Dep't of Educ.*, No. 14-1034-CV, 2015 WL 6118183, *1, 4 (2d Cir. Oct. 19, 2015), the awarding of discretionary bonuses is another potential trap for the unwary employer.

Davis, a teacher in New York City, was part of a district-wide program where she was eligible for a bonus if the students at her school met certain achievement goals. The amount of the bonus was completely discretionary. At the beginning of the 2008-2009 school year, Davis was injured in a car accident and took disability leave for most of the school year. Her school met its achievement goals that year, but because of her absence, Davis received a lesser bonus than her colleagues. Davis then brought suit under the Americans with Disabilities Act, claiming that receiving a smaller bonus than her colleagues constituted disability discrimination.

The district court dismissed Davis' suit on the merits because it concluded that she did not present sufficient evidence that the Department of Education acted with discriminatory animus and Davis appealed. Although the Second Circuit affirmed the dismissal, in doing so the Court ruled that an employer's denial or reduction of a bonus constitutes an "adverse employment action" sufficient to maintain a discrimination suit even when the decision to award the bonus is entirely discretionary. The employer's argument was that because it had no obligation to award the bonus in the first place, the failure to award it (or the decision to award a smaller amount in comparison to others) could not be an "adverse employment action." But the Court's message was simple: when determining to whom to award bonuses, and the amounts of those bonuses, employers may not exercise their discretion in a way that disfavors members of a protected class.

Employers should keep this decision in mind as they enter their end-of-the-year annual review and compensation process.

Posted in Compensation

pullcom.com  @pullmancomley

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