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## GENERAL MEMORANDUM 10-016

### Court Upholds Family Medical Leave Act and Disabilities Claim Against Tribal Contractor

In *Pearson v. Chugach Government Services, Inc.*, the federal District Court for the District of Delaware dismissed a claim against Chugach Government Services, Inc. (Chugach) for a Title VII discrimination claim, but allowed claims based on the Family Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA) to proceed.

Chugach is a federal contractor operating on Delaware's Dover Air Force base and is a wholly owned subsidiary of Chugach Alaska Corporation, an Alaska Native Regional Corporation. The plaintiff in the case, Bobbie Jo Pearson, was an employee of Chugach. Chugach terminated her employment due to poor work performance. Pearson filed a claim with the Equal Employment Opportunity Commission (EEOC) for wrongful termination based on sex, disability, and also alleged a hostile work environment. The EEOC issued Pearson a right to sue letter. Pearson then sued Chugach in district court alleging that Chugach violated Title VII of the Civil Rights Act by discriminating against her on the basis of sex and disability. Pearson also claimed discrimination under Title I of the ADA and interference with her rights under the FMLA.

Chugach moved to dismiss, arguing that the Alaska Native Claims Settlement Act exempts Alaska Native Corporations (ANC) and their subsidiaries from Title VII discrimination claims in the same manner that Indian tribes are exempt. 33 U.S.C. § 1626(g). Pearson agreed to drop her Title VII claim, but continued to pursue her ADA and FMLA claims.

The issue the court confronted is whether the federal exemption for ANCs and their subsidiaries from Title VII of the Civil Rights Act is broad enough to also exempt them from related federal discrimination statutes. The district court felt that it had to balance principles of sovereignty and self-determination against policies to eliminate discrimination.

The court started with the presumption that the exemption for Indian Tribes from Title VII should be construed narrowly. The court noted the similar exemption for ANCs but stated that the "evolution of ANCs into open-market interstate commercial organizations, including employment of non-Native Americans," raised questions about the scope of the exemption.

The court did not hold that the defendant in this case was subject to Title VII's jurisdiction. Nevertheless, the court still turned to a 2007 Fourth Circuit Court of Appeals' decision holding that the ANC exemption in Title VII was not broad enough to preclude a section 1981 employment discrimination claim. *Aleman v. Chugach Support Servs., Inc.*, 485 F.3d 206 (4<sup>th</sup> Cir. 2007). The court expressed its support for the view that the ANC exemption for Title VII should be limited to the promotion of Indian employment preference.

With respect to the ADA claim, the court noted that Congress exempted tribes from ADA coverage but stated that it was unsure “how far the Native American exemption reaches”. The court looked to an Eleventh Circuit Court of Appeals decision which applied Title III of the ADA to an Indian tribe’s gaming operation because it held that the operation was not part of the tribe’s governmental function. *Fla. Paralegic Ass’n, Inc. v. Miccosukee Tribe of Indians of Fla.*, 166 F.3d 1126 (11<sup>th</sup> Cir. 1999).

The Court then wrote that:

[M]oreover, case law circumscribes its tribal exemption to tribal organizations functioning in a governmental role. While the boundary of the ADA’s tribal exemption is imprecise, it is clear that for-profit tribal corporations operating in the ordinary course of interstate commerce fall outside that boundary.

The court also wrote that “the growing role of ANC’s as national commercial enterprises militates against a broad interpretation of its Title VII exemption”. Noting that the parent corporation employed 5000 people in the construction, environmental services, informational technology and telecommunications industries, the court held the following:

[W]hen an ANC invokes immunity it is not promoting Native American employment nor protecting tribal self-governance, but avoiding normal antidiscrimination prohibitions having nothing to do with Native American ethnicity or tribal governance.

The court then held that ANC’s are similarly liable under the FMLA, noting that the law contains no express exemption for tribes.

The court’s ruling should be of concern to Indian tribes, Alaska Native Corporations and their subsidiaries because like similar employment and labor law rulings (such as the D.C. Circuit Court of Appeals’ 2007 *San Manuel* decision) the courts have shown a willingness to limit statutory tribal exemptions based on their view that tribal businesses are becoming too commercial.

Please let us know if we may provide additional information or assistance regarding this case.

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