

Employers Liable for Contractor's Discriminatory Acts

April 2010

The Second Circuit Court of Appeals, which covers Connecticut, recently ruled that employers can be held directly liable for the discriminatory acts of contractors hired to perform certain tasks on their behalf. In *Halpert v. Manhattan Apts.*, the court found a company that hired an independent contractor to conduct job interviews was liable for discriminatory remarks made by the contractor during the hiring process. While the case involved the Age Discrimination in Employment Act, the court made it clear that the same principles apply under Title VII.

In this case, Manhattan Apartments hired Robert Brooks, an independent contractor, to screen, interview, and hire employees for Manhattan Apartments. In interviewing the plaintiff, Michael Halpert, Brooks allegedly told Halpert he was "too old" for the position. Halpert sued Manhattan Apartments claiming a violation of the ADEA.

In reversing the lower court, the Court of Appeals found that when an employer hires an individual to interview candidates and make employment decisions on its behalf, the company may be held liable if that individual improperly discriminates on the basis of age, or any other protected characteristic. This is true whether the individual responsible for the conduct is an employee or independent contractor. When an independent contractor is used, liability attaches directly under agency theory, making the company liable for the acts of any of its actual or apparent agents.

To limit legal exposure, employers should carefully screen contractors, and make sure they are trained in equal employment opportunity practices. Also, any agreement between the employer and contractor should include indemnification language so that the employer is indemnified for any acts of the contractor that may expose the employer to liability. These steps are especially important as firms continue to outsource more human resource work and thereby lose direct control over important interactions.

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