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OPERATIONAL IMPACT OF SIGNIFICANT CASES

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I. ISSUES AFFECTING HOSPITALS AND HEALTHCARE PROVIDERS

A. Physician Credentialing

1. Equal Employment Opportunity Commission v. Yale New Haven Hospital, Inc.

The Equal Employment Opportunity Commission ("EEOC") filed a lawsuit against Yale New Haven Hospital, Inc., ("YNHH") alleging violations of federal anti-discrimination laws due to the hospital's "Late Career Practitioner Policy" ("the Policy") that requires medical providers over the age of 70 to take neuropsychological and ophthalmologic medical examinations as a condition of renewing their staff privileges.[1] The EEOC Complaint alleges violations of the Age Discrimination in Employment Act, 29 U.S.C. § 621 et. seq., as amended, ("ADEA") and the Americans with Disabilities Act, 42 U.S.C. §12101, et seq., as amended by the Americans with Disabilities Act Amendments Act of 2008 ("ADA") and Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. The Complaint seeks to end unlawful employment practices on the basis of age; to redress interference with rights protected under the ADA; to stop medical examinations in violation of the ADEA and ADA; and to provide appropriate relief to aggrieved employees and individuals who were adversely affected by such practices.[2]

The Complaint alleges that "because YNHH medical staff privileges are a condition of employment as a clinical faculty member of the Yale School of Medicine and other local employers, the Policy interferes with the enjoyment and rights protected by the ADA of Yale School of Medicine employees and other local medical employees."[3] Dr. Irwin Nash filed a charge with the EEOC alleging violations of the ADEA and ADA by YNHH and on August 15, 2019, the EEOC issued a Letter of Determination finding reasonable cause to believe that the ADEA and ADA were violated with respect to Dr. Nash and a class of aggrieved individuals.[4] On October 11, 2019, the EEOC issued to YNHH a Notice of Failure of Conciliation advising YNHH that the EEOC was unable to secure from YNHH a conciliation agreement acceptable to the Commission.[5]

The Complaint provides that all Yale School of Medicine faculty with appointments, like Dr. Nash, in the clinical departments must obtain medical staff privileges and YNHH with appropriate clinical privileges.[6] In addition, at the time of initial appointment and every two years thereafter, all physicians and other practitioners who are members or affiliated members of the YNHH Medical Staff must undergo a thorough evaluation of their skills and competence.[7] The Complaint alleges that since about March 2016, YNHH has imposed an additional term and condition on the granting of medical staff privileges only for those age 70 and above through the Policy and that those subject to the Policy are subjected to it solely because of their age and without any particularized suspicion that their eyesight or neuropsychological ability may have declined.[8] As of April 2019, the Policy had been applied to 145 individuals, 14 of who were listed as "Borderline deficient;" 1 listed as "Deficient"; 7 as having "Failed;" 5 as "N/A" because they refused testing and either resigned or changed their status; 80 as having "Passed;" and 38 as having "Qualified Passed."[9] Twenty-one have since had the neuropsychological testing administered for a second time, with each having "Passed" or "Qualified Pass."[10]

In the *Prayer for Relief*, the EEOC asks the court to:

- Grant a permanent injunction to enjoin YNHH from engaging in any employment practice which discriminates on the basis of age;

- Order YNHH to institute and carry out policies, practices and programs which provide equal employment opportunities for individuals 70 years of age and older, and which eradicate the effects of its past and present unlawful employment practices;

- Grant a permanent injunction enjoying YNHH, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from utilizing the Policy;

- Grant a permanent injunction enjoining YNHH, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from interfering with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of any right protected by the ADA;

- Grant a judgment requiring YNHH to pay appropriate back wages in an amount to be determined at trial, an equal sum as liquidated damages, and prejudgment interest to individuals whose wages are being unlawfully withheld as a result of the acts in the Complaint;

- Order YNHH to make whole all individuals adversely affected by the unlawful practices by providing the affirmative relief necessary to eradicate the effects of its unlawful practices, including but not limited to instatement, reinstatement, provide front pay in lieu of reinstatement, or otherwise make whole individuals denied employment because of their age;

- Order YNHH to make whole Dr. Nash, and all others similarly affected, by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of above, including emotional pain, suffering, loss of enjoyment of life, and humiliation, in amounts to be determined at trial; and

- Order YNHH to pay Dr. Nash and all others similarly affected punitive damages for its malicious and reckless conduct described above in amounts to be determined at trial.[11]

On May 13, 2020, YNHH filed an Answer to the Complaint and the parties submitted a joint Rule 26(f) report on August 21, 2020. Thereafter, on September 14, the case was reassigned to another district judge.[12] The judge then ordered that Phase I of discovery should be completed by March 31, 2021, and Phase I dispositive motions should be completed by May 15, 2021.[13] Likewise, the judge ordered Phase II of discovery to be completed by October 22, 2021, with Phase II dispositive motions due two months later.[14] Since the court's order, the parties have engaged in multiple discovery disputes. On September 13, 2021, Judge Vanessa Bryant extended the deadlines for discovery and dispositive motions to March and May 2022, respectively. The order extending the deadlines indicated the court would be "disinclined to grant any further

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