4 Employment Law Developments That Flew Under The Radar

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By **Vin Gurrieri**

Law360, New York (January 26, 2018, 7:08 PM EST) -- There's been plenty of action recently in federal courts recently that employment lawyers may have missed, including a judge temporarily freezing a New York City law that forces fast-food businesses to forward workers' voluntary paycheck deductions to nonprofits and Charles Schwab losing its bid to compel arbitration in a class action alleging it mishandled an employee retirement plan.
Here, Law360 looks at four noteworthy developments that could have slipped through the cracks.

Stop Sign for NYC Pay Deduction Law

The National Restaurant Association scored a win on Jan. 17 when U.S. District Judge Paul G. Gardephe put on hold a key portion of New York City's Fair Workweek Law that required fast-food businesses to forward voluntary deductions from workers' paychecks to city-certified nonprofits of their choosing, like the Fight for $15 campaign.

The judge's order pauses the so-called deduction bill while the NRA and its legal affiliate **seek to invalidate** it. The trade group has argued in its suit against the city and Lorelei Salas, commissioner of the New York City Department of Consumer Affairs, that the deductions bill violates the First Amendment and is preempted by both the National Labor Relations Act and the Labor Management Relations Act.

The stay of the deduction bill will remain in effect until either the court rules on the parties' respective motions for summary judgment, which are in the process of being briefed, or March 30 — whichever occurs first.

The statute was part of **a package of bills**, signed in May by New York City Mayor Bill de Blasio, aimed at helping fast-food and retail workers.

The case is Restaurant Law Center et al. v. City of New York et al., case number 1:17-cv-09128, in the U.S. District Court for the Southern District of New York.

No Arbitration for Schwab Worker

A federal judge in California ruled on Jan. 18 that investment services provider Charles Schwab & Co. Inc. can't force Michael Dorman — the lead plaintiff in a putative class action brought by participants in a Schwab retirement savings and investment plan — to individually arbitrate his claims that plan administrators violated their fiduciary duties to the plan under the Employee Retirement Income Security Act.

U.S. District Judge Claudia Wilken denied Schwab's bid to enforce three separate arbitration agreements against Dorman, a former financial consultant. One of those arbitration provisions was included the plan agreement, another was in a form he signed shortly after joining Schwab in 2009 that was required under Financial Industry Regulatory Authority rules, and a third was from a compensation plan Dorman signed in 2014.

Judge Wilken held that none of the three arbitration clauses were binding on Dorman, noting that one was amended more than a year after he was no longer a plan participant.

"The plan document issued a year after Dorman ceased participation in the plan cannot apply to his claims," the judge said. "To hold otherwise would be inequitable because it would allow a plan defendant to amend the plan documents unilaterally at any time, even after a participant has brought suit against the defendant, and put the participant at a disadvantage."

But even if the arbitration provisions did apply to Dorman, the judge said Schwab would still lose its bid to arbitrate since he brought the suit under ERISA "on behalf of the plan," and as such he can't waive the plan's right to pursue legal action.

"He cannot release the right to file a claim in court or the right to file a class action, both of which belong to the plan," the judge said.

Initially filed in January 2017, Dorman's suit alleged that Schwab's plan since 2009 offered several investment options that were managed by the company, and that those funds charged higher fees and performed more poorly than other investment options on the market.

By offering those Schwab-affiliated funds without "meaningful investigation" into whether they were prudent investments or whether better options were available, Dorman claimed that Schwab violated ERISA.

The case is Dorman et al. v. Charles Schwab & Co. Inc. et al., case number 4:17-cv-00285, in the U.S. District Court for the Northern District of California.

Time Warner, CNN Hit With Race Bias Class Action

Time Warner Inc., along with TBS and CNN, were hit with a putative class action by on Jan. 18 alleging their practices prevent midlevel African-American managers from advancing into top-level positions.

Lead plaintiff Wanda Byrd, a former quality assurance consultant at TBS for 13 years, accused the networks and their parent company of discriminating against African-Americans in pay, promotions and evaluations in violation of Title VII as well as Section 1981 of the Civil Rights Act of 1871.

Byrd, whose complaint largely focused on TBS, alleged that even though African-Americans make up about one-third of the people in midlevel managerial and staffing positions, they are "extremely underrepresented at higher pay grades and senior positions" and "generally labor three times as long" as their white counterparts to receive any type of promotion.

Among other things, she claimed TBS has various formal written and unwritten policies that limit competition for top jobs, and segregates the company into divisions where African-American leadership is acceptable and divisions where it is not.

"African-Americans in senior positions are concentrated in less powerful and non-revenue-generating areas," the complaint said. "This discrimination represents a companywide pattern and practice, rather than a series of isolated incidents."

Byrd, who claims she was passed over been passed over for at least 30 promotions during her time at TBS that ended up going to less qualified white men, seeks to represent all African-American individuals employed by the defendants in salaried and midlevel managerial positions since April 1997.

The case is Byrd v. Turner Broadcasting System Inc. et al., case number 1:18-cv-00271, in the U.S. District Court for the Northern District of Georgia.

Disability Bias Verdict Award Trimmed But Upheld

A New York federal judge on Jan. 19 upheld a jury's determination that medical equipment supplier Maxi-Aids Inc. illegally discriminated against a former employee when it fired him shortly after he asked for time off to care for his ailing daughter.

U.S. District Judge Leonard Wexler largely upheld a July 2016 verdict that the company violated the Americans with Disabilities Act and the New York State Human Rights Law when it fired Barry Reiter, its onetime director of business development, after he informed the company that he needed to take time off to take care of his ailing daughter.

Reiter, who had previously been ridiculed by the company's owner because of his own health conditions, was fired not long after he requested leave to care for his daughter presumably because the company was underperforming financially, according to court documents. A jury subsequently found in Reiter's favor as to his ADA associational disability and NYSHRL discrimination claims, awarding him $400,000 in punitive damages.

"Defendants' awareness of [Reiter's daughter's] disability coupled with their decision less than two weeks later to end plaintiff's employment is sufficient evidence to allow a reasonable jury to infer that the disability of plaintiff's daughter was a determining factor in the decision to terminate him," Judge Wexler said in his Jan. 19 order, adding that "there was also evidence that the financial reasons offered for Reiter's termination ... were pretextual."

But Judge Wexler, among other things, also lowered the jury's decision to award Reiter $400,000 in punitive damages, saying that such damages are statutorily capped at $50,000 for intentional discrimination based upon the number of employees at the company.

"The court finds that an award of the statutory cap amount of $50,000 does not shock the conscience or violate due process, and is supported by the evidence," the judge said, adding that Reiter is also entitled to about $6,600 for lost income and health insurance payments made after his termination.

The case is Barry Reiter v. Maxi-Aids Inc. et al., case number 2:14-cv-03712, in the U.S. District Court for the Eastern District of New York.

--Editing by Katherine Rautenberg.