Legal Matters

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Claims of discrimination based on military service are easier to prove

Under the federal law protecting military personnel from job discrimination, a company must prove a job action would have occurred even if a worker had not served in the military, according to a recent ruling.

This makes it easier for employees to prove they were discriminated against because of military service.

In the case, a man was a supervisor at an ocean shipping company and enlisted as a reservist in the U.S. Marine Corps. When the company fired him, he filed suit alleging the company discriminated against him under the federal law known as the Uniformed Services Employment and Redeployment Rights Act (USERRA).

Under most laws protecting workers from bias, an employee who sues has to prove the reason offered by an employer for an adverse job action is a "pretext," and the real reason for the employment

decision was discrimination.

But under USERRA, an employee has to only prove military service is a motivating factor in the disputed employment decision, according to a federal appeals court.

To avoid liability, the employer has to prove the adverse employment action would have occurred regardless of the employee's military service, the court said.

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Settling a personal injury claim can affect estate planning

If you or someone you know is suing for personal injuries, it's important to remember the way the case is settled could affect estate planning.

Here's a tragic story illustrating this point. A couple in Michigan sued a doctor and a hospital for severe injuries to their daughter during childbirth. The daughter required special care for the rest of her life.

The doctor and the hospital settled the case. Under the settlement, the parents received a lump sum to compensate them for their own suffering and expenses. The daughter received two annuities that would pay her $5,000 per month for life (with the payments increasing 5 percent per year). The annuities were guaranteed to last for 30 years, and if the daughter died before then, the money would be paid to her estate.

The IRS ruled the present value of the annuities was part of the girl's estate, and demanded $500,000 in estate taxes.

The parents went to court, but the U.S. Tax Court decided in favor of the IRS.

However, the court suggested if the settlement had been set up differently, the estate tax problem might have been avoided. For example, if the annuities had been transferred at the girl's death to her parents or someone else, then the tax outcome may have been less onerous.

If you or someone you know has a personal injury claim, it's a good idea to consult on any estate planning issues. It might be possible to eliminate tax problems in the way the settlement is structured. In addition, a large personal injury settlement could in itself require a change in estate

The girl died when she was 12 years old.

planning, since the additional money could alter the assumptions on which a previous plan was based.

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Parental alienation 'syndrome': The latest weapon in difficult divorces

A growing trend in bitter custody battles is for one parent to level a charge that the ex-spouse is deliberately turning the child against him or her.

"Parental alienation syndrome" is a controversial diagnosis to describe a child who compulsively denigrates one parent in response to consistent brainwashing by the other parent. As a result of a deliberate campaign of steady insults, a child reflexively supports the parent alienating the targeted parent.

The mental health profession is not in agreement about the existence of the syndrome, however. Critics contend it's often simply an excuse made up by parents who want someone to blame for their poor relationship with their children.

Regardless, the claim of parental alienation is surfacing more and more in custody disputes around the country. Essentially, a targeted parent claims the alienating parent is not fit to have custody because of the cruel and mean-spirited effort to turn the child against him or her.

Sometimes the behavior that prompts charges of parental alienation is subtle, such as frequent disparaging remarks within earshot of the child or setting up appointments and activities for the child during times when the other parent is scheduled to have visitation. Other times it is openly aggressive – like an unfounded accusation of child abuse or neglect.

Proving parental alienation can be a tall order.

It's generally necessary to have a mental health professional testify as an expert witness. Also, having witnesses who were present when some of the alienating interactions occurred can be powerful evidence.

In many cases, a judge will appoint a psychologist to work with both parents and the children in order to obtain a non-partisan expert opinion. Also, a guardian on behalf of the child may be appointed to help assess the situation.

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Hospital can be liable for 'independent contractor's' actions

Parents of a newborn delivered at a Florida hospital signed a "consent form" stating that a specialist participating in their child's birth was an "independent contractor" and was not employed by the hospital.

The couple's son was born suffering from fetal-maternal hemorrhage and compression of the umbilical vein, which deprived him of oxygen-rich blood. In the hours following his birth, the baby's breathing became more labored and he required resuscitation.

The baby ultimately developed permanent brain damage, and the parents blamed a neonatologist and the hospital, claiming the resuscitation had not been performed correctly or quickly enough.

The parents asserted the hospital had a contractual obligation to provide proper neonatal care to their newborn son, and to also provide the needed medical and surgical treatments.

The hospital countered it wasn't responsible for the child's injuries because the specialist was an independent contractor, which the parents had acknowledged when they signed the consent form.

But the Florida Court of Appeal disagreed with the hospital, ruling the case could proceed to trial.

The court said once the hospital contractually agreed to provide medical care it couldn't avoid liability simply by hiring an independent contractor.

The consent form only indicated the parents acknowledged the medical care was delegated to an independent contractor specialist. While the hospital can't be liable as an employer, it remained responsible for its obligations under the contract with the parents, the court said.

Because the exact scope of the hospital's obligations under the contract was unresolved, the court sent the case back to the trial court.

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Should you take out a ‘piggyback’ loan or buy private mortgage insurance?

If you can’t put 20 percent down on a new home, you are usually faced with either taking out a “piggyback” loan or paying for private mortgage insurance.

Which is the better option?

In recent years, it was almost always better to take out a piggyback loan. Piggybacks appeal to homeowners because the combined monthly payments usually add up to less than the monthly payments on a single loan with mortgage insurance.

The piggyback borrower uses the loan to bring the down payment up to 20 percent. So named because a second mortgage is “piggybacked” onto the original mortgage loan, the piggyback can be either a fixed-rate home equity loan or a home equity line of credit.

But two recent developments – a new federal law along with rising interest rates – are making private mortgage insurance (PMI) a better deal for many homebuyers.

PMI – which protects the bank in case a borrower defaults on a mortgage – is typically required for people who don’t put 20 percent down. Statistics show these borrowers are more likely to miss their payments. (Some banks pay the PMI premiums themselves, but charge the borrower a higher rate to make up for it.)

In recent years, interest rates were so low that it was almost always better to take out a piggyback loan rather than pay for PMI. Last year, for instance, roughly half of all home buyers who took out a mortgage also took out a piggyback, as opposed to only about 6 percent who used PMI.

But with higher interest rates these days, the answer isn’t always so easy. And a new federal law allows many people who buy homes in 2007 to deduct their PMI payments on their federal income taxes.

If you don’t plan to put 20 percent down, it’s a smart idea to run the numbers and take a close look at whether a piggyback or PMI is better for you.

Here are some things to consider:

• **Can you deduct PMI?** The new law lets you deduct PMI on your federal income taxes if you get a mortgage in 2007, provided you have less than $100,000 in adjusted gross income

(or $50,000 if you’re married and filing a separate return). The deduction is reduced if you have adjusted gross income between $100,000 and $109,000, and it’s eliminated for people with more than $109,000.

The law also applies to refinancing loans, but only if the new loan isn’t for more than the current mortgage debt. The law applies only to mortgages taken out in 2007, although Congress could decide to extend it.

• **How big a piggyback?** Even if the rate on a piggyback loan is higher than the rate on PMI, that doesn’t always mean PMI is better. Keep in mind that if you have a $300,000 mortgage and a $15,000 piggyback, the piggyback rate applies only to the $15,000, while the PMI rate would apply to the $300,000.

• **How fast will you pay off the mortgage?** If you plan to pay down the mortgage quickly, PMI might be a good bet because you can stop paying it. Typically, borrowers can eliminate PMI once they have paid down the mortgage to either 78 percent of the purchase price or 80 percent of the home’s current market value. Determining your home’s current market value might require getting an appraisal from a company approved by the lender, but doing so could be a good investment if it means eliminating a monthly PMI payment.

• **Should you refinance now?** Some borrowers who bought a home a few years ago with a piggyback home equity line of credit might benefit from refinancing and choosing PMI instead. Interest rates on these lines of credit have increased sharply in some cases, and it might make sense now to switch, especially since the PMI may be tax-deductible if you refinance in 2007.

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New California law mandates sexual harassment training

California recently passed a new law mandating sexual harassment training for any company with 50 employees or more if at least one supervisor is based in California.

This means companies nationwide could be repeated every two years.

• The training should explain what constitutes sexual harassment, how to prevent it, what to do if it occurs, and the reporting process for complaints.

Two other states, Connecticut and Maine,

be affected by the measure.

Employers who take steps to comply with the law will likely be better off should they face lawsuits down the road. Companies have a strong defense if they can show they made a reasonable effort to comply with the law.

Some the requirements of the law include:

• Supervisors in California must receive training within six months of being hired or promoted.

• The training must be at least two hours of classroom or other interactive training, such as webinars, which must

also mandate sexual harassment training. Florida, Illinois, Pennsylvania, Texas and Utah require training for state employees only.

Conducting training in this area is a good idea regardless of whether it's required by state law. Employers are helping their workforces as a result, and can also avoid or minimize liability by training their supervisors in this area.

If a lawsuit is ever filed, it's important for an employer to show it takes sexual harassment seriously and cares about its employees.

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