

Issues & Answers

LABOR & EMPLOYMENT ALERT

New Supreme Court Decision & Legislation 2002

Supreme Court Issues New Employment-Related Decision

By Alec Hillbo

Importance: Employers May Deny a Job to a Disabled Worker Whose Disability Poses a Serious Health Risk to the Worker's Own Health or Safety

In Chevron U.S.A., Inc. v. Echazabal,¹ the Supreme Court addressed the issue of whether an Equal Employment Opportunity Commission ("EEOC") regulation exceeded the scope of permissible rulemaking under the Americans with Disabilities Act ("ADA"). Specifically, the Chevron Court addressed the validity of an EEOC regulation that allowed an employer to refuse to hire a potential worker with a disability because of danger to that worker's *own health*. In this important decision favoring employers, the Court held that the ADA permitted such a regulation.

Mario Echazabal worked for independent contractors at an oil refinery owned by Chevron. Echazabal applied for positions with Chevron directly. Chevron, however, declined to hire Echazabal because he had liver damage resulting from Hepatitis C. Chevron's physicians concluded that work at the refinery – exposure to chemicals – would aggravate the damage to

Echazabal's liver. Chevron asked the independent contractor employing Echazabal to reassign him to a new job or to remove him from the refinery. When the contractor laid off Echazabal, he filed suit claiming Chevron violated the ADA.

Chevron defended against Echazabal's ADA claim on the ground that the EEOC had issued a regulation allowing an employer to screen out a potential worker with a disability for risks on the job to his or her own health or safety. Echazabal, on the other hand, took a more narrow position, arguing that the ADA did not allow for exclusion of individuals who pose a risk to themselves. Specifically, he argued that the ADA created a business necessity defense only when an individual poses "a direct threat to health or safety of *other individuals* in the workplace...."

In rejecting Echazabal's position, the Chevron Court reasoned that an agency like the EEOC must have discretion in determining permissible job-related and business qualifications – a defense to screening out disabled workers. As a result, employers may deny a job to a disabled worker who poses a risk to his or her own health or safety. An employer, notably, must make a particularized inquiry into the harms that the employee would face on the job. The Chevron

Court specifically noted that the employer must undertake an "individualized assessment of the individual's present ability to safely perform the essential functions of the job" taking into account the "imminence of risk" and the "severity of the harm." The assessment must be based on "reasonable medical judgment," "current medical knowledge," and the "best available objective evidence." ■

¹ No. 00-1406, 2002 WL 1270586 (2002).



SAVE THE DATE

For the 2002

Labor & Employment

Fall Seminar scheduled for

October 8, 2002 in Phoenix

October 9, 2002 in Tucson.

Arizona Labor and Employment Legislation 2002

By Michele Tyler

The 2002 Regular Legislative Session did not provide Arizona employers with any new benefits or protections, and Arizona broadcasters lost their right to enter into non-competition agreements with their employees, but the Session could have been worse. Some proposed, but ultimately unsuccessful, legislation could have significantly increased labor costs for most Arizona employers and subjected them to more litigation. For example, several bills were introduced that would have expanded Arizona's civil rights laws by adding new protected classes – sexual orientation and gender identity. The addition of these protected classes would have subjected Arizona's employers to lawsuits that employers in almost all other states simply do not face. Some of these and other proposals would have increased the statute of limitations and exposed employers to high punitive damages awards in state court, where a jury verdict need not be unanimous.

Other burdensome proposed legislation included raising the weekly maximum benefits for unemployment compensation, while simultaneously increasing the wages on which employers pay unemployment tax and reducing the amount that an individual must have earned in one calendar quarter to be eligible for benefits. The legislature also considered prohibiting all Arizona employers from entering into non-competition agreements with their employees. Employer groups and their legal counsel successfully fought back this

proposed legislation, but we expect to see many of these proposals again next year.

This document summarizes the most significant labor and employment practice-related bills enacted by the Arizona Legislature in 2002. This summary does not include bills that primarily affect public employers. The summaries provided below are intended only to give a synopsis of the content of each bill. Please call Michele Tyler at (602) 916-5391 or any other member of Fennemore Craig's Labor and Employment Practice Group at (602) 916-5000 if you have comments or questions on any of the bills, or would like copies of any of the bills.

The Legislature adjourned *sine die* on May 23, 2002. Therefore, the effective date for all bills not carrying an emergency clause, or a retroactive or delayed effective date, is noon on August 22, 2002.

Broadcast Employees; Non-compet

Clause: SB 1042 – This bill prohibits Arizona broadcasters from entering into non-competition agreements with any of their employees.

Governor Hull signed SB 1042 on May 21, 2002. (Laws 2002, Chapter 253)

Job Training Programs: HB 2265 – This bill replaces the Arizona Job Training Council with the Governor's Council on Workforce Policy. The new council will assume the old council's responsibilities and will, among other things, develop guidelines for criteria to determine the annual qualifying wage rate per county so that the rate reflects current economic conditions and the needs of local

businesses in the county. In order to receive certain grants and awards, a business must pay employees at least the county's qualifying wage rate.

Governor Hull signed HB 2265 on May 21, 2002. (Laws 2002, Chapter 264)

Arizona Civil Rights Act; Revisions: HB

2353 – This bill amends the definition of "disability" in the Arizona Civil Rights Act ("ACRA") to include mental impairments, use of alcohol, current use of nonillegal drugs, and previous use of illegal drugs. It also prohibits most pre-employment medical examinations and inquiries, similar to the Americans with Disabilities Act. The bill further amends the ACRA to conform to the ADA and adds age as a protected class for purposes of apprenticeship or other job training. The bill also makes changes to the voting rights and public accommodations provisions of the Civil Rights Act.

The bill does not increase the damages available to a plaintiff complaining of employment discrimination. However, the damages available to a prevailing plaintiff for a violation of the voting rights and public accommodations provisions of the Act now include: (1) actual and compensatory damages, including damages for emotional distress; (2) court costs; (3) injunctive relief; and (4) attorneys' fees. If the action is brought by the Attorney General, the plaintiff cannot recover attorneys' fees, but the defendant may be assessed a civil penalty of not more than \$5,000 for the first violation and \$10,000 for any subsequent violation.

The Governor signed this bill on June 4, 2002. (Laws 2002, Chapter 339) ■

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