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Labor and Employment Update: Ninth Circuit Rules On Reduction In Force Case

By Donald R. Gilbert and Joshua L. Waltman

The recent opinion in *Diaz v. Eagle Produce Limited Partnership* serves as a reminder that layoffs are not as easy as many employers might think – especially in the Ninth Circuit. *Diaz* is particularly important during an economic downturn because more employers may be considering layoffs.

In *Diaz*, the Ninth Circuit concluded a reduction in force does not, alone, constitute a legitimate, non-discriminatory explanation for discharge. The employer presented overwhelming evidence that layoffs of farm workers were necessary due to seasonal downturn. The Court agreed. However, the Ninth Circuit required justification for each “particular” employee’s layoff. The District Court granted summary judgment against all four plaintiffs. The Ninth Circuit affirmed as to three of the workers, and reversed and remanded as to the fourth.

The employer also showed its overall termination statistics did not support a disparate treatment argument. Again, the Court agreed. However, one supervisor was singled out. Statistics showed the average age disparity between workers hired and those laid off grew from two years to 16 years when this supervisor took over personnel decisions for plaintiffs’ crew. Although this supervisor’s hiring and firing practices did not reflect those in the overall workplace, the Court relied on this narrow statistical evidence to conclude three of four plaintiffs established a prima facie case.

Therefore, the burden shifted to the employer to articulate a legitimate, non-discriminatory reason for the layoffs. The employer argued all plaintiffs were laid off due to the reduction in force. Standing alone, this was insufficient because it was not “particular” to each individual plaintiff. The Court stated, “[w]orkforce reduction explains why [the employer] laid off a group of its workers, but it does not explain why *Diaz* was chosen to be part of that group.” As such, *Diaz*’s discrimination claim was reversed and remanded.

In contrast to *Diaz*, for whom the employer offered no additional reason for the layoff, the employer demonstrated two other employees had a history of damaging company property. The Court concluded the employer articulated a legitimate, non-discriminatory reason for the layoffs as to these employees. The employer’s explanation was individualized and reflected concerns about job performance unrelated to the workers’ protected status. As such, the employer failed to meet its burden as to *Diaz*, but met its burden as to two other plaintiffs.

Employers who wish to avoid discrimination liability during layoffs should seek legal review of their layoff plans. Employers should develop a plan under which they establish their staffing needs, identify where layoffs will occur, develop criteria for selecting employees, and test whether the criteria disproportionately impact a protected group. *Diaz* reminds employers to articulate the criteria for layoffs and document, even if only internally, the specific reasons for each particular layoff decision.

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