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Unequal Severance Packages Are Adverse Employment Actions

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By Emily G. Camastra

Unequal severance packages can constitute violations of Title VII of the Civil Rights Act, the 4th U.S. Circuit Court of Appeals decided. The fact that severance packages are voluntary, noncontractual benefits does not mean that employers may offer them to employees on a discriminatory basis, the court held.

Karla Gerner worked for Chesterfield County, Va., for more than 25 years. On Dec. 15, 2009, county officials informed her that the county was eliminating her position as director of human resources management. Officials asked her to sign a severance agreement, which offered her three months' pay and health benefits in exchange for her voluntary resignation and waiver of any cause of action against the county. After a few days of consideration, Gerner declined the offer. The county then terminated her employment without any severance pay or benefits.

Gerner filed suit against the county, alleging disparate treatment on the basis of sex in violation of Title VII. She claimed that the county did not offer her the same "sweetheart" severance package that it offered her male counterparts when the county sought to terminate their employment.

The district court dismissed Gerner's claim of discrimination, finding that she could not maintain a cause of action for discrimination because "the terms and conditions of a severance package do not constitute an actionable adverse employment action." The district court held that an employment benefit must be a contractual right in order for its denial to provide a basis for a Title VII claim.

On appeal, the 4th Circuit reversed the district court's dismissal of Gerner's complaint and held that the district court erred in holding that a less favorable severance package could not serve as a basis for a Title VII claim. The 4th Circuit pointed out that the U.S. Supreme Court has held that "any benefit that is part and parcel of the employment relationship may not be doled out in a discriminatory fashion, even if the employer would be free ... simply not to provide the benefit at all."

The 4th Circuit held that severance packages are "part and parcel of the employment relationship," and the fact that employers are under no obligation to furnish severance packages does not permit offering such packages on a discriminatory basis.

Gerner v. County of Chesterfield, Va., 4th Cir., No. 11-1218 (March 16, 2012).

Professional Pointer: Employers should ensure that similarly situated employees are offered equivalently similar severance packages. If an employee can show that he or she was offered a less favorable severance package on the basis of race, sex or any other protected category, the employer could face an action for unlawful discrimination.

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