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Seventh Circuit To Employers: Be Specific, Ambiguities In Rule 68 Offers Of Judgment Might Cost You

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The Seventh Circuit recently sent a very important message to employers making offers of judgment to plaintiffs: Be specific.

The message was sent via *Sanchez v. Prudential Pizza, Inc. et al.*, Case No. 12-2208. Leading to the Seventh Circuit's decision, the Plaintiff had sued the Defendant-employer for sex discrimination, sexual harassment, and retaliation under Title VII of the Civil Rights Act of 1964. In advance of trial, the Defendant made an offer of judgment under Federal Rule of Civil Procedure 68, which permits a party defending a claim to serve on an opposing party "an offer to allow judgment on specified terms, with the costs then accrued."

Defendant's offer included “all of Plaintiff's claims for relief,” but did not specifically mention costs or attorneys' fees. Plaintiff accepted the offer and the district court entered judgment in favor of the Plaintiff, but denied her request for attorneys' fees and costs in addition to the amount specified in Defendant's Rule 68 offer.

T he Seventh Circuit reversed the district court's finding that the language of the offer of judgment was unambiguous. Finding the Rule 68 offer silent with respect to costs and fees and reasoning that any ambiguity must be construed against the defendant, the Seventh Circuit held that Plaintiff was entitled to recover attorneys' fees and costs in addition to the amount contained in the offer of judgment.

The Court's ruling offers an important lesson to employers: When drafting a Rule 68 offer of judgment, ensure that the offer expressly states that it includes costs and where claimed, attorneys' fees.

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