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Southern District Of Indiana Limits Scope Of Discovery Sought From Former Employers For Whom Plaintiff May Obtain Re-Employment Pursuant To Union Working Agreement

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Koryn M. McHone
Of Counsel

In an opinion issued earlier this week in Grant v. Graycor Industrial Constructors, Inc ., Cause No. 3:12-cv-44-RLY-WGH, Magistrate Judge Hussmann of the U.S. District Court for the Southern District of Indiana affirmed the propriety of discovery from a plaintiff's prior employers in the context of a Title VII discrimination/retaliation suit, while discussing the potential limits on such discovery under certain circumstances, and providing guidance to employers as to factors to consider when pursuing non-party discovery.

Specifically, Judge Hussman held that information regarding a plaintiff's prior work experience was certainly *discoverable* when the plaintiff claimed to have suffered a hostile work environment and experienced emotional distress due to the defendant's alleged actions and his employment relationship with same. The Court further rejected the plaintiff's objections to the breadth of the subpoenas, which sought a complete copy of all employment records in each prior employer's possession for the plaintiff (including, but not limited to "all records relating to his rate of pay, amount of income received, absenteeism, hours worked, benefits available and received, evaluations, physical examinations or medical records and letters of resignation or termination of employment"), finding such information to be relevant and discoverable.

Despite the initial determination that the requested information was discoverable, however, the Court prohibited the mass distribution of such subpoenas to more than 20 past employers of the plaintiff. The rationale for such denial stemmed from the plaintiff's status as a union member subject to a union Working Agreement, which allowed for prospective employers to consider and reject any applicant furnished by the union, the potential chilling effect on plaintiff's employment prospects, and the "annoyance, embarrassment or oppression" that could result from placing prospective employers on notice of the employment litigation in which the plaintiff was involved.

Recognizing, however, that information regarding the plaintiff's past suits or complaints against a former employer or disciplinary history with same would be relevant to the pending litigation and would not likely cause such embarrassment, annoyance or oppression, the Court ordered the plaintiff to identify which of his former employers he had sued or against whom he had filed any formal or informal complaint of discrimination or retaliation, as well as those from whom he had been disciplined (and the reason for same),

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suspended, or terminated, in order for subpoenas to appropriately be directed to such entities.