HR Weekly Podcast
3-19-2014

Today is March 19, 2014, and welcome to the HR weekly podcast from the State Human Resources Division. Today's topic discusses a recent historic race discrimination settlement.

On December 6, 2013, a class action settlement was approved by a federal judge in Chicago that included the brokerage firm of Merrill, Lynch, Pierce, Fenner & Smith in which they agreed to pay $160 million to more than 1,400 African-American investment advisers. The investment advisers alleged that the firm's "teaming" and "account distribution" policies had a discriminatory impact on minorities in violation of Title VII of the Civil Rights Act of 1964 and 42 U.S.C. 1981.

Merrill Lynch's teaming policy allowed brokers in the same office to form teams; however, they were not required to form or join teams. The purpose of forming or joining a team was to gain access to additional clients or to share clients with brokers who have compatible skills. Teams decided who to admit as a new member. Brokers established the teams rather than a manager.

Account distributions occurred when brokers left Merrill Lynch and their clients' accounts must be transferred to other brokers. Accounts were transferred within a branch office and the brokers in that office competed for the accounts. The company established criteria for deciding who would win the competition.

This case involved lengthy litigation over the certification of the class. The district court denied certification but the current and former investment advisers renewed their motion for certification after the United States Supreme Court's 2011 decision in Wal-Mart v. Dukes. The Wal-Mart decision holds that if employment discrimination is practiced by the employer's local managers when they are exercising discretion granted to them by top management rather than implementing a uniform policy established by management, a class action by more than a million current and former employees is unmanageable. Considering Merrill Lynch's renewed motion, the district court again denied the motion.

On appeal, the United States Court of Appeals for the Seventh Circuit ruled that, although Merrill Lynch management does not select a team's members, managers do have a measure of discretion with regard to teaming and account distribution. They can oppose teams and supplement the company criteria for distributions. The appellate court believed the Merrill Lynch case was similar to Wal-Mart in which the regional and local managers exercised discretion regarding the compensation of the brokers whom they supervised. The appellate court expressed, however, that the exercise of that discretion was influenced by the two company-wide polices at issue: authorization to brokers, rather than managers, to form and staff teams and basing account distributions on the past success of the brokers who are competing for the transfers. The court of appeals also noted that team participation and account distribution can affect a broker's performance evaluation, which under company policy influences pay and promotion. The court of appeals reversed the denial of class certification.

If you have a question about this topic, please contact your HR Consultant at 803-896-5300. Thank you.