Judge Grants Workday, Inc.'s Motion to Dismiss in Groundbreaking AI Class Action Lawsuit Mobley v. Workday

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In a recent development in *Mobley vs. Workday, Inc.*, the novel class action lawsuit filed in the United States District Court for the Northern District of California alleging that Workday's algorithm-based applicant screening tools discriminate against job applicants based on race, age, and disability, the Court granted Workday's motion to dismiss on January 19, 2024, with leave for plaintiff to amend the Complaint. As we previously reported here, lead plaintiff Derek Mobley filed this lawsuit, alleging that all of his applications for 80-100 jobs with employers who use Workday's screening tool were rejected and that these tools allow Workday's customers to use "discriminatory and subjective judgments" when evaluating applicants and even allow for "preselection" of applicants not within certain protected categories. He further alleged that Workday's administration and dissemination of the screening tools constituted a "pattern or practice" of discrimination and that this conduct amounted to intentional and disparate impact discrimination.

The Court agreed with Workday that Mobley's Complaint did not sufficiently allege facts showing that Workday qualifies as an "employment agency" that could be subject to liability under the anti-discrimination laws. Under Title VII and the ADA, an "employment agency" is defined as "any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person." The ADEA definition is slightly narrower, excluding the clause about procuring opportunities for employees. The Court found Mobley's allegations that Workday was an employment agency to be sparse and conclusory, noting that the Complaint alleged very few details about his application process and did not address whether Workday helps to recruit and select applicants. Moreover, Mobley never alleged whether the AI tools "perform[ed] screening based solely on employer criteria, Workday's own algorithm(s), or some combination of the two." Overall, the Court held that Mobley's allegations did not plausibly state that Workday was sufficiently involved in procuring employees to be held liable as an employment agency. However, the Court noted that Mobley could amend his Complaint to cure the pleading deficiency and to plead two additional theories of liability identified at the motion hearing and in his opposition brief—that Workday is covered as either an "indirect employer" or an "agent" under the relevant anti-discrimination statutes.

In granting leave to amend, the Court also provided observations on how Mobley could strengthen his intentional discrimination and disparate impact claims. On intentional discrimination, the Court noted gaps in allegations about Mobley disclosing his protected traits to Workday and his qualifications for the numerous jobs he applied for. As to disparate impact, the Court found Mobley's reliance on his own experience insufficient to show a broad disparity caused by a specific employment practice. Although his Complaint focused on the AI screening tools, it was unclear "what or whose specific use of the tools is allegedly discriminatory."

This Order allows Mobley's case to move forward if he can amend his Complaint to plead sufficient facts in support of his claims. Mobley has until February 20, 2024, to file an amended Complaint curing the deficiencies outlined in the Order. We will be monitoring this case for further developments.

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