

Temporary Workers Get Class Status In Decade-Old Bias Suit

By **Patrick Hoff**

Law360 (February 23, 2023, 3:47 PM EST) -- An Illinois federal judge gave class status to a group of about 13,500 Black workers who say they were turned away from temporary jobs at a beauty product manufacturer by three staffing agencies because of their race, noting that testimony suggests the manufacturer had a common employment policy.

U.S. District Judge John J. Tharp Jr. rejected arguments from Vee Pak LLC and Staffing Network Holdings LLC that litigating the decade-old claims would require too many individualized inquiries, **ruling Tuesday** that not every member of the proposed class needs to prove harm before it can be certified.

"Ultimately, the court finds unpersuasive the defendants' attacks on class certification," Judge Tharp said. "A jury's finding that a discriminatory policy, rather than Vee Pak's insistence on experienced workers, motivated defendants' hiring and referral decisions, would 'eliminate the need for repeat adjudication of this question for determinations of damages or individual injunctive relief,'" he said, citing a 2015 Seventh Circuit opinion.

Judge Tharp noted that there may be a need for subsequent individualized inquiries to determine which class members were actually impacted by any discriminatory policies and how much each worker is owed in damages, but he said this doesn't preclude class certification.

The lawsuit was filed against Vee Pak, Staffing Network, Personnel Staffing Group LLC and Alternative Staffing Inc. in December 2012, alleging that the three staffing agencies adhered to a Vee Pak policy that preferred Latino temporary workers to Black workers in its manufacturing facility.

Alternative Staffing settled the class claims against it in 2018, while Personnel Staffing Group received preliminary approval of a settlement in December. A final approval hearing for the Personnel Staffing Group agreement is set for April.

According to the suit, the Vee Pak production floor jobs required no formal training or education, and all necessary skills could be learned on the job. Vee Pak told the court, however, that it asked staffing agencies to send "regular" workers who had consistently worked at Vee Pak in the past because they were more efficient and effective without supervision.

The Black workers said in their suit, however, that "regular" workers was code for Latino workers, and management at staffing agencies understood "regular" to mean non-Black. According to the workers, Vee Pak kept a list of "regulars" that it preferred to be assigned on shifts, and almost all the people on this list were Latino.

Judge Tharp certified three subclasses of Black workers, including groups who sought work assignments at Vee Pak through Staffing Network or Alternative Staffing, respectively, between 2011 and 2015, and a group who sought work through Personnel Staffing Group between 2011 and 2013.

In making his decision to grant class certification, Judge Tharp refused to toss testimony the workers provided from a labor economist regarding the statistical differences between how much work Latino workers received and how much work Black workers received. Vee Pak and Staffing Network argued there were myriad issues with the expert's analysis, but Judge Tharp said it was not his place to decide the merits of the testimony.

"As long as an expert uses a reliable methodology, whether the expert used the right variables and the conclusions that can be drawn from those limited variables is a question for the jury," Judge Tharp said.

Joseph Sellers of Cohen Milstein Sellers & Toll PLLC, who is representing the class, told Law360 the 50-page opinion was a "very thoughtful, thorough treatment of the subjects that affect class certification."

"This has been going on a long time, and our clients have waited a very long time for relief," Sellers said. "We feel like we're close to the light at the end of the tunnel here."

He added that barring any challenge to the class certification, he expects the court will set a trial date later this year.

Vee Pak, Staffing Network and Alternative Staffing are also part of a suit **filed by the Illinois attorney general** in May. According to the complaint, six staffing agencies engaged in a three-year conspiracy, supported by Vee Pak, to refrain from recruiting or otherwise poaching the temporary workers they assigned to the beauty product manufacturer's facilities in order to lessen competition.

Sellers said that while they're two separate cases, he thinks the Illinois attorney general has found, as he has, that some staffing agencies cater to the prejudices of companies they work with.

"Not only is that unlawful, but it's the kind of practice that should end for the entire industry," he said. "And we hope that these cases will help bring that to an end."

Representatives of Vee Pak and Staffing Network Holdings did not immediately respond to requests for comment.

The class is represented by Joseph M. Sellers and Harini Srinivasan of Cohen Milstein Sellers & Toll PLLC, by Christopher J. Williams of the National Legal Advocacy Network, and by Christopher J. Wilmes and Caryn C. Lederer of Hughes Socol Piers Resnick & Dym Ltd.

Vee Pak is represented by Donald S. Rothschild and Brian M. Dougherty of Goldstine Skrodzki Russian Nemec and Hoff Ltd. and by Joseph K. Mulherin of McDermott Will & Emery LLP.

Staffing Network is represented by Elliot S. Richardson and Michele D. Dougherty of Korey Richardson LLP.

The case is Joe Eagle et al. v. Vee Pak Inc. et al., case number 1:12-cv-09672, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Lauraann Wood. Editing by Khalid Adad.