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Employee Who Requested Medical Leave For Depression While Working For Another Employer May Have Been Improperly Terminated

Lonicki v. Sutter Health Central, 43 Cal. 4th 201 (2008)

Antonina Lonicki, a certified technician of sterile processing, was fired when she failed to return to her job at Sutter, following a leave of absence. During the leave, Lonicki continued to perform the same job duties at Kaiser in the same geographic area. In her lawsuit, Lonicki alleged Sutter had violated the California Family Rights Act (CFRA) by denying her request for a medical leave, which was based upon her belief that her shift at Sutter was "too stressful." The trial court granted summary judgment to Sutter on the ground that Lonicki could not have been suffering from a "serious health condition" because throughout the relevant time period she was successfully performing the functions of an identical job at Kaiser. In a 4-to-3 ruling, the California Supreme Court reversed the court of appeal's judgment affirming summary judgment for Sutter on the ground that the part-time job at Kaiser was only *evidence* of Lonicki's ability to do similar work for Sutter, but it was not conclusive. The Supreme Court also held that Sutter's failure to invoke the CFRA's dispute-resolution mechanism of having a health care provider who has been jointly chosen by the parties determine the employee's entitlement to medical leave did not bar Sutter from later claiming Lonicki did not suffer from a serious health condition.

Owners And Managers Cannot Be Held Personally Liable For Wage Violations

Bradstreet v. Wong, 161 Cal. App. 4th 1440 (2008)

Toha Quan and Anna Wong owned the capital stock and served as corporate officers or directors of three San Francisco garment manufacturing companies (the "Wins Corporations"). For several months during the summer of 2001, the Wins Corporations failed to meet their payroll obligations, and the owners encouraged the employees to continue working without pay. After the Labor Commissioner paid wage claims from an account established pursuant to Labor Code § 2675.5, the

Commissioner filed this lawsuit against the owners, seeking to hold them personally liable for unpaid wages owed by the bankrupt Wins Corporations. Following the California Supreme Court's opinion in *Reynolds v. Bement,* 36 Cal. 4th 1075 (2005), the trial court held that
Quan and Wong could not be held personally liable for the employer's unpaid wages and related penalties. The Court of Appeal affirmed the judgment in favor of Quan and Wong. *See also Costco Wholesale Corp. v. Superior Court,* 161 Cal. App. 4th 488 (2008) (employer would not be irreparably harmed by production of redacted version of letter from employer's counsel regarding alleged misclassification of managers).

$1.8 Million Judgment Affirmed In Favor Of Employee Who Was Discriminated Against On The Basis Of Race And Gender

Harvey v. Sybase, Inc., 2008 WL 1765025 (Cal. Ct. App. Apr. 18, 2008)

Marietta Harvey was hired and supervised by Nita White-Ivy in the human resources departments of two different companies, including Sybase. When Sybase terminated Harvey, she alleged discrimination on the basis of race or gender. The jury agreed and returned a verdict in Harvey's favor in the amount of $1.3 million in compensatory damages and $500,000 in punitive damages. In its unsuccessful motion for judgment notwithstanding the verdict, Sybase argued the jury's verdict was not supported by substantial evidence because the "same actor rule" raised a strong inference that White-Ivy did not discriminate against Harvey in terminating her since she had also hired her. The Court of Appeal affirmed the trial court's denial of Sybase's motion, holding that "same actor" evidence is simply evidence and should be treated like any other piece of proof – but it is not a "rule" or "presumption" in the employer's favor. The Court of Appeal affirmed dismissal of Harvey's public policy claims founded upon Labor Code § 232 (prohibiting discharge for disclosing the amount of wages) and § 232.5 (prohibiting discharge for disclosing information about "working conditions") in the absence of evidence to support the former claim and a "well established public policy" to support the latter. *Cf. Davis v. Team Elec. Co.,* 520 F.3d 1080 (9th Cir. 2008) (summary judgment in favor of employer in Title VII gender discrimination, hostile work environment and retaliation case is reversed).

Employee Who Was Involved In Auto Accident Was Not Acting Within The Scope Of Employment

Miller v. American Greetings Corp., 161 Cal. App. 4th 1055 (2008)

Holly and Paul Miller sued Christopher Magdaleno and American Greetings, his employer, for injuries Holly sustained when Magdaleno hit her with his pick-up truck while she stood next to her car on a road in Pasadena. The Millers subpoenaed Magdaleno's cellphone records, which indicated that Magdaleno had been speaking to his crew chief approximately eight minutes before the accident occurred at 9:35 a.m.; Magdaleno testified that he was on his way to meet with a probate attorney in Pasadena when he hit Holly. The trial court granted American Greetings' motion for summary judgment, which the Court of Appeal affirmed based on the absence of a triable issue of material fact that Magdaleno was acting within the course and scope of his employment with American Greetings at the time of the accident. *Cf. Rodriguez v. Bank of the West,* 2008 WL 1822793 (Cal. Ct. App. Apr. 24, 2008) (banks where defalcating employee deposited checks payable to her employer (an attorney) owed no duty of care to the attorney).

Retailer May Be Liable For Employee's Violent Assault On A Customer

Flores v. Autozone West, Inc., 161 Cal. App. 4th 373 (2008)

Juan Rodriguez Flores was injured by Erwin Gomez, an Autozone employee, when Gomez struck Flores on the head with a steel pipe. Flores sued Autozone for assault and battery based on a respondeat superior theory and for negligent hiring and related torts. The trial court granted Autozone's motion for summary judgment, but the Court of Appeal reversed the judgment, holding that an employee's physical eruption, stemming from his interaction with a customer, may be a predictable risk of retail employment. The Court affirmed summary adjudication in favor of Autozone of the direct liability negligence claims on the ground that Autozone did not have a legal duty to conduct a background check or to administer a personality screening test of Gomez before hiring him or to have terminated his employment because he had raised his voice at a customer three years earlier. The Court also affirmed dismissal of Flores' punitive damages claim against Autozone. *Cf. Lyons v. Fire Ins. Exch.,* 161 Cal. App. 4th 880 (2008) (insurance carrier properly denied coverage for claims arising out of alleged sexual attack and false imprisonment).

Farm Worker May Have Been Laid Off In Violation Of The ADEA

Diaz v. Eagle Produce, 521 F.3d 1201 (9th Cir. 2008)

Phoenix Agro Invest, Inc. and SAM Management, Inc. operate a commercial broccoli and melon farm in Arizona and usually lay-off workers during the winter months. Among others, the company laid off plaintiffs, four workers over the age of 50 years old, who challenged the lay off under the Age Discrimination in Employment Act ("ADEA"). The district court granted summary judgment to the employer, but the Ninth Circuit reversed the dismissal as to one of the four workers based on evidence of satisfactory job performance and an accumulation of circumstantial evidence that could lead reasonable jurors to draw an inference of age discrimination. Among other things, the Court considered statistical evidence that showed a drop in the average age of workers hired after a particular supervisor took over, while the average age of workers who were laid off rose.

Common Interest Privilege Does Not Shield AT&T From Potential Defamation Claim

*SDV/ACCI, Inc. v. AT&T Corp.,*522 F.3d 955 (9th Cir. 2008)

SDV/ACCI (a consulting and staffing service company) and its principals sued AT&T after one of AT&T's employees sent several e-mails in and outside the company stating that SDV/ACCI would no longer be providing services to AT&T because SDV/ACCI was having "financial difficulties." The district court granted summary judgment to AT&T, but the Ninth Circuit reversed in part, holding that the common interest privilege (Cal. Civ. Code § 47(c)) did not bar the defamation action because there was enough circumstantial evidence to permit a reasonable trier of fact to find that malice primarily motivated the publication regarding SDV/ACCI's alleged financial difficulties and that the AT&T employee did not have a good faith belief in the truth of the statements she had made.

Nurse Who Alleged Violation Of False Claims Act Need Not Satisfy Heightened Pleading Standard

Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097 (9th Cir. 2008)

Marie Bernadette Mendiondo, who worked as a nurse at the medical center, alleged she was terminated in retaliation for her complaints regarding allegedly false billing and reimbursement practices and substandard patient care in violation of the Federal and California False Claims Acts. Although the district court dismissed her claims, the Ninth Circuit reversed, holding that the heightened pleading requirements of Fed. R. Civ. P. 9(b) do not apply to FCA retaliation claims – instead, an FCA retaliation claim must only meet the Fed. R. Civ. P. 8(b) notice pleading requirement.

Employee Is Entitled To Recover Attorney's Fees In Breach Of Contract Action Filed By His Former Employer

Profit Concepts Mgmt., Inc. v. Griffith, 2008 WL 1932427 (Cal. Ct. App. May 5, 2008)

Profit Concepts sued Greg Griffith, a former employee, for breach of contract and misappropriation of trade secrets in Orange County Superior Court. Griffith, who was an Oklahoma resident at the time, moved to quash service for lack of personal jurisdiction. (The contract contained a prevailing-party attorney's fees provision.) Profit Concepts filed a notice of non-opposition to Griffith's motion to quash, and the trial court granted the motion. Griffith then filed a motion to recover his attorney's fees in the action ($3,400.78) on the ground that he was the prevailing party. The trial court granted Griffith's motion, and the Court of Appeal affirmed.

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