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Pay Discrimination Claim Was Subject To 180-Day Statute Of Limitations

Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. ___, 127 S. Ct. 2162 (2007)

Lilly Ledbetter was employed by Goodyear for approximately 19 years at the company's Gadsden, Alabama plant. After taking early retirement, Ledbetter commenced this action against Goodyear in which she alleged pay discrimination on the basis of gender in violation of Title VII and the Equal Pay Act. Goodyear asserted that Ledbetter's pay discrimination claim was time barred with respect to all pay decisions that were made prior to 180 days before she filed her EEOC questionnaire. In order to resolve a conflict among the Courts of Appeals, the Supreme Court granted certiorari and ruled in a 5-to-4 decision that Ledbetter's claims were subject to a 180-day statute of limitations. The Court concluded that "Ledbetter should have filed an EEOC charge within 180 days after each allegedly discriminatory pay decision was made and communicated to her." *Compare McDonald v. Antelope Valley Cmty. Coll. Dist.,* 2007 WL 1575511 (Cal. Ct. App. 2007) (equitable tolling principles prevented application of the one-year limitations period of Cal. Gov't Code § 12960(d)).

Employee Terminated For Excessive Personal Use Of Company Resources Was Not Discriminated Against

Loggins v. Kaiser Permanente Int'l, 2007 WL 1395393 (Cal. Ct. App. 2007)

During her employment with Kaiser, Dianne M. Loggins filed at least four claims alleging race discrimination or retaliation with the EEOC and the DFEH. She also complained to the Human Resources Director that her performance review contained criticisms that had "racial overtones." Despite her claims of discrimination, Loggins received substantial salary increases and a recommendation for a promotion from the supervisor who allegedly was discriminating against her. Loggins was terminated following an investigation into her use of Kaiser's office facilities, materials and resources for her privately owned boarding home business. Although Loggins told the investigators that she did not work on matters related to her business while at work, the investigation revealed that a substantial portion of her Kaiser computer's hard drive had been used for her own business, and her time records showed she worked on her business pursuits while being paid by Kaiser. Following her termination, Loggins filed an additional three claims of discrimination with the DFEH. The Court of Appeal affirmed summary judgment in favor of Kaiser, concluding that Kaiser produced sufficient evidence showing a legitimate non-discriminatory reason for the termination. *Cf. Gallanis-Politis v. Medina,* 2007 WL 1519783 (Cal. Ct. App. 2007)

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(retaliation claim asserted against two supervisors who conducted attorney-guided investigation into employee's conduct should have been stricken under anti-SLAPP statute).

Employee Who Falsified Timecard Was Not Terminated Because Of His Disability

King v. United Parcel Serv., 2007 WL 1493316 (Cal. Ct. App. 2007)

Richard King, a supervisorial employee who had worked for UPS for almost 30 years, was terminated for an "integrity violation" involving the falsification of a driver's timecard. In his lawsuit, King alleged that UPS had terminated him because he was diagnosed with a blood disorder that necessitated his taking a medical leave of absence for four months. In affirming summary judgment for UPS on the discrimination claim, the Court of Appeal concluded that "[i]t is the employer's honest belief in the stated reasons for firing an employee and not the objective truth or falsity of the underlying facts that is at issue in a discrimination case… we conclude plaintiff has failed to submit substantial evidence that UPS did not honestly believe plaintiff had violated its integrity policy when it fired him." The Court further concluded there was no breach of an implied employment agreement with King because "UPS, acting in good faith following an appropriate investigation, had reasonable grounds for believing plaintiff had [encouraged a subordinate employee to falsify his timecard]." Finally, the Court affirmed dismissal of the defamation claim on the ground that UPS's statements to other UPS employees about King's termination were protected by the "common interest" privilege. *Cf. Walton v. U.S. Marshals Serv.,* 2007 WL 1815504 (9th Cir. 2007) (court security officer who was terminated for inability to localize sound was not discriminated against in violation of the ADA or Rehabilitation Act).

Employee May Have Been Victim Of "Reverse" Religious Discrimination

Noyes v. Kelly Services, 2007 WL 1531824 (9th Cir. 2007)

Lynn Noyes alleged that her supervisor, who was a member of a small religious group called the "Fellowship of Friends," had engaged in "reverse" religious discrimination when he selected another member of the Fellowship instead of Noyes for a promotion. The trial court granted summary judgment to the employer, but the Ninth Circuit Court of Appeals reversed on the ground that the trial court had misapplied the Supreme Court's opinion in *St. Mary's Honor Ctr. v. Hicks,* 509 U.S. 502 (1993). The Ninth Circuit held that a plaintiff may raise a genuine issue of material fact as to the pretext of the employer's purported non-discriminatory reason for the termination either with (1) direct evidence of the employer's discriminatory motive or (2) indirect evidence that undermines the credibility of the employer's articulated reasons. Here, Noyes's supervisor's credibility "was severely undermined by conflicting evidence on the promotion process."

Employee Who Provided Customer Service And Training Related To Company's Software Was Not Exempt From Overtime

Eicher v. Advanced Bus. Integrators, Inc., 2007 WL 1678244 (Cal. Ct. App. 2007)

ABI sells computer software that is used in sports and entertainment venues to schedule staff, manage payroll, credentialing and security and to keep track of costs. ABI employed Michael Eicher to provide on-site customer service and training on the ABI software. ABI considered Eicher to be a consultant and paid him a salary, but no overtime. The Court of Appeal held that ABI failed to carry its burden of establishing that Eicher was an exempt administrative employee. Specifically, the Court held that ABI failed to prove that Eicher performed "office or non-manual work directly related to management policies or general business operations of ABI or its customers" — the test underlying the so-called "administrative-production dichotomy." The Court concluded that Eicher "regularly engaged in the core day-to-day business of ABI – that is, implementing the ABI [software] at customer venues and supporting the customers." After reducing the amount of damages Eicher could recover (to account for PTO), the Court further held he was entitled to the attorneys' fees he incurred in the trial and appellate court proceedings. *Compare Long Island Care at Home, Ltd. v. Coke,* 551 U.S. ___, 127 S. Ct. 2339 (2007) (companionship workers provided through third-party agencies are exempt from the Fair Labor Standards Act).

No-Hire Provision In Consulting Agreement Was Unenforceable

VL Systems, Inc. v. Unisen, Inc., 2007 WL 1807001 (Cal. Ct. App. 2007)

VL Systems (VLS) entered into a computer consulting agreement with Star Trac Strength (a dba of Unisen) whereby Star Trac agreed not to hire any VLS employee for 12 months after the contract's termination, the breach of which triggered liquidated damages payable to VLS. Within the 12-month period, Star Trac hired a VLS employee who was not solicited by Star Trac, had not performed any work for Star Trac and had not even been employed by VLS at the time the consulting agreement with Star Trac was in effect. VLS sued for breach of contract and was successful in obtaining a portion of the liquidated damages in the trial court. The Court of Appeal reversed, holding that "enforcing this [no-hire] clause would present many of the same problems as covenants not to compete and [would] unfairly limit the mobility of an employee who actively sought an opportunity with Star Trac."

Individuals Who Sold Business Were Properly Enjoined From Competing In Violation Of Contract

Huong Que, Inc. v. Luu, 150 Cal. App. 4th 400 (2007)

After Mui Luu and Cu Tu Nguyen sold Huong Que, Inc. (the "most well known, recognized and trusted brand name for

traditional style Vietnamese calendars") to Con Tu, they agreed to remain employed as the company's "managing agents." The sales agreement contained a covenant not to compete whereby Luu and Nguyen agreed not to engage in the publishing business "except for publishing Buddhist bible and book." After the sale, Con Tu discovered an email exchange with a third party in which Luu attached Huong Que's customer list and discussed forming a new calendar publishing company to be named "Pro Calendar." Con Tu filed suit alleging breach of contract, breach of the duty of trust and loyalty, misappropriation of trade secrets and tortious interference with Huong Que's economic advantage. The trial court enjoined defendants (including several individuals associated with Pro Calendar) from: using the Huong Que customer list; distributing calendars to those customers; soliciting business from them; and selling competing calendars to them. The Court of Appeal affirmed the preliminary injunction after concluding the trial court correctly forecast probable success by Huong Que on its claims for breach of the duty of loyalty and tortious interference with prospective economic advantage. *Cf. Payment Systems, Inc. v. Walczer,* 2007 WL 1805066 (Cal. Ct. App. 2007) (customer non-solicitation covenant is enforceable in connection with partnership dissolution); *H.B. Fuller Co. v. Doe,* 2007 WL 1559542 (Cal. Ct. App. 2007) (trial court ordered to unseal documents filed in connection with company's subpoena of Yahoo! to determine the identity of employee who posted confidential information on the Internet).

Bank Could Be Liable For $4.6 Million Embezzlement By Company's CFO

Zengen, Inc. v. Comerica Bank, 41 Cal. 4th 239 (2007)

Zengen's CFO embezzled $4.6 million by directing four fraudulent funds transfers from the company's account to an account he controlled. Although the trial court granted summary judgment to the bank (which was affirmed by the Court of Appeal), the California Supreme Court reversed. The Supreme Court construed the California Uniform Commercial Code (Section 11505), which requires a customer to notify the bank within one year after receiving notice of a payment of its objection to the payment in order to receive a refund. The Supreme Court held that the lower court should have applied the following test: "Whether, under all of the relevant circumstances, a reasonable bank would understand from the customer's communication that the customer was objecting to what the bank had done in accepting the payment order or otherwise considered the bank liable for the loss." Contrary to the bank's position, there was evidence in this case that Zengen had done more than just inform the bank that the payment orders were unauthorized.

Law Firm Could Be Vicariously Liable For The Actions Of A Non–Equity Partner

PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP, 150 Cal. App. 4th 384 (2007)

PCO, Inc., by and through its duly appointed receiver, Barry A. Fisher, filed this action against Robert L. Shapiro and his law firm, Christensen, Miller, et al., alleging that Shapiro improperly directed a group of individuals to remove over $6 million in cash (which was packed into 12 duffel bags) from the Palm Springs residence of David Laing, who was later convicted of engaging in fraudulent activities with PCO. Among other things, PCO alleged the cash belonged to the receivership and should not have been used to pay Laing's bail or his attorney's fees. The Christensen firm asserted that it could not be held vicariously liable for Shapiro's conduct. Although the trial court granted summary judgment to the firm, the Court of Appeal reversed the judgment, holding there was a triable issue of material fact as to whether Shapiro's alleged actions could be attributed to the firm. The Court affirmed summary adjudication against PCO on its claims for conversion and breach of fiduciary duty. *See also Ermoian v. Desert Hosp.,* 2007 WL 1793125 (Cal. Ct. App. 2007) (although doctors were independent contractors and not employees of hospital, they were ostensible agents).

Union Employees' Wage Claims Were Not Preempted By Federal Labor Law

Burnside v. Kiewit Pac. Corp., 2007 WL 1760747 (9th Cir. 2007)

The employees in this class action case were required to report to a designated site before being transported in company vans or pickup trucks to their jobsites. The employees were told that the reason for this arrangement was that there was a "shortage of parking spaces at the jobsites." The combined meeting and travel time added 2 to 2½ hours of time to each employee's workday. In their complaint, plaintiffs alleged violations of California's Unfair Competition Law, the California Wage Orders for unpaid regular and overtime wages and conversion. The employer removed the case from state to federal court and asserted that plaintiffs' claims were preempted by Section 301 of the Labor Management Relations Act. The district court granted the employer's motion for summary judgment based on federal preemption, but the Ninth Circuit reversed, holding that the claims at issue in the lawsuit are based on a right conferred as a matter of state law and not by the employees' collective bargaining agreement (CBA). Further, the Court of Appeals held that it was not necessary to "interpret" the CBA.

Package Delivery Drivers Were Employees, Not Independent Contractors

Air Couriers Int'l v. Employment Dev. Dep't, 150 Cal. App. 4th 923 (2007)

Sonic Couriers of Arizona (Air Couriers' predecessor) filed a complaint for refund against the Employment Development Department (EDD) to recover employment taxes it paid for its drivers, which Sonic contended were independent contractors and not employees. Among other things, the EDD established that Sonic provided the drivers with pick-up and delivery times, equipment, training, and uniforms, and many drivers worked for Sonic for lengthy tenures. Further, Sonic retained all necessary control over the drivers. The Court of Appeal affirmed the trial court's judgment in favor of the EDD.

Employee Who Was Threatened And Assaulted By Co–Worker Stated Wrongful Termination Claim

Franklin v. The Monadnock Co., 151 Cal. App. 4th 252 (2007)

Calvin Franklin alleged that a co-worker had threatened to have him and three other employees killed, that Monadnock did nothing in response to the threats and that the co-worker thereafter assaulted him with a screwdriver. After Franklin reported the threats and the assault to the police, his employment was terminated. Franklin alleged that he was terminated in violation of the public policy that requires employers to provide a safe and secure workplace and that encourages employees to report credible threats of violence. Although the trial court sustained the employer's demurrer, the Court of Appeal reversed, holding that plaintiff had properly alleged a claim for wrongful termination in violation of public policy.

Employer Improperly Failed To Give Employee Notice Of His Right To Take Medical Leave

Faust v. California Portland Cement Co., 150 Cal. App. 4th 864 (2007)

After Michael Faust notified his plant manager that various unnamed employees had engaged in internal theft and misconduct, the plant manager informed Faust's supervisor of the allegations who in turn warned Faust's co-workers to "watch their backs" around Faust. Faust, who received the "cold shoulder" from his coworkers, soon began to experience shortness of breath, confusion, panic attacks and feelings of despair before starting a 30-day psychiatric program at Kaiser Permanente. Faust also experienced severe lower back pain, began undergoing chiropractic treatment and filed a workers' compensation claim. Faust submitted a medical certification form from his chiropractor that recommended physiotherapy, chiropractic therapy and rest and stated Faust was unable to perform regular job duties for a month. The human resources manager (Crystal Andersen) called Faust's home and then sent him a letter questioning the chiropractor's note, saying it was inappropriate (it was not a physician's note) and incomplete (it requested modified work, not an absence from work). Faust's workers' compensation lawyer advised him not to respond to the letter. The company failed to notify Faust of his right to take medical leave under the California Family Rights Act (CFRA) or the Family Medical Leave Act (FMLA). Faust's employment was terminated because "the paperwork [he] submitted was insufficient to sustain an approved absence from work." The Court of Appeal reversed the summary judgment that had been entered in favor of the employer, holding that the company had improperly failed to give Faust notice of his CFRA/FMLA leave rights. *Cf. Davis v. Los Angeles Unified School Dist.,* 2007 WL 1839285 (Cal. Ct. App. 2007) (wrongfully demoted employee who was medically unable to return to work was not entitled to backpay or reinstatement).

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