Proskauer

California Employment Law Notes

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Employer Can Recover Its Costs And Attorney's Fees From Plaintiff Who Prosecuted "Objectively Groundless" FEHA Action

Williams v. Chino Valley Indep. Fire Dist., 2015 WL 1964947 (Cal. S. Ct. 2015)

Loring Winn Williams sued the District for employment discrimination in violation of the California Fair Employment and Housing Act ("FEHA"). The trial court granted summary judgment in favor of the District and awarded the District its court costs in the amount of $5,368.88 (the District did not request reimbursement of its attorneys' fees). Although the trial court awarded costs to the District, the trial court failed to make any finding that plaintiff's action was frivolous, unreasonable or groundless as required for a defendant's recovery of attorney's fees in federal civil rights actions under the authority of *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412 (1978). In this opinion, the California Supreme Court expressly adopted the *Christiansburg* standard, which provides as follows: "...a prevailing *plaintiff* should ordinarily receive his or her costs and attorney fees unless special circumstances would render such an award unjust... A prevailing *defendant*, however, should not be awarded fees and costs unless the court finds the action was objectively without foundation when brought, or the plaintiff continued to litigate after it clearly became so." The Court remanded the matter for further proceedings to determine whether the action was objectively groundless.

Pregnant UPS Driver Could Proceed With Challenge To Employer's Failure To Accommodate

Young v. United Parcel Serv., 575 U.S. ___, 135 S. Ct. 1338 (2015)

Peggy Young worked as a part-time driver for UPS. After suffering several miscarriages, Young became pregnant. Her doctor told her that she should not lift more than 20 lbs. during the first 20 weeks of her pregnancy or more than 10 lbs. thereafter. UPS required drivers like Young to be able to lift parcels weighing up to 70 lbs. and up to 150 lbs. with assistance. UPS told Young that she could not work while under a lifting restriction, and Young stayed home without pay during most of the time she was pregnant and eventually lost her employee medical coverage. In the lawsuit that followed, Young asserted that UPS had accommodated other drivers who were "similar in their… inability to work" and alleged that UPS' failure to provide such an accommodation to her violated the Pregnancy Discrimination Act ("PDA"). UPS responded that the "other persons" whom it had accommodated were drivers who (1) had become disabled on the job; (2) had lost their Department of Transportation certifications; and (3) suffered from a disability covered by the Americans with Disabilities Act. UPS contended that because Young did not fall within any of those categories, she had not been discriminated against on the basis of pregnancy but had been treated the same way it treated all other employees not in those categories.

The Court of Appeals affirmed summary judgment in favor of UPS, but in this opinion, the United States Supreme Court vacated that judgment, holding that a plaintiff such as Young may make out a prima facie case of disparate treatment under the PDA by showing that the employer did accommodate others "similar in their ability or inability to work." The Court further noted that a plaintiff can create a genuine issue of material fact as to whether a significant burden exists for the employer by providing evidence that the employer accommodates a large percentage of nonpregnant workers while failing to accommodate a large percentage of pregnant employees. However, the Supreme Court rejected Young's position that pregnant employees are entitled to "most-favored-nations" status such that they should receive no less favorable treatment than any other subset of accommodated workers.

No-Employment Provision In Settlement Agreement May Be An Unenforceable Restrictive Covenant

Golden v. California Emergency Physicians Med. Group, 2015 WL 1543049 (9th Cir. 2015)

Donald Golden, M.D., is an emergency-room doctor formerly affiliated with the California Emergency Physicians Medical Group ("CEP"), a large consortium of over 1,000 physicians that manages or staffs many emergency rooms in California and other western states. Dr. Golden sued CEP for various claims, including racial discrimination. Prior to trial, the parties settled the case and announced the terms orally in open court. Pursuant to the settlement, Dr. Golden received, among other things, a substantial monetary amount and agreed to waive any and all rights to employment with CEP or any facility that CEP may own or with which it may contract in the future. Dr. Golden later refused to execute the written agreement confirming the settlement and sought to have it set aside. The magistrate judge and the district court disregarded Dr. Golden's objections and ordered that he be compelled to sign the settlement agreement. Dr. Golden appealed, asserting that the no-employment provision in the settlement agreement was unlawful under Cal. Business & Professions Code § 16600 (which invalidates "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business..."). The United States Court of Appeals for the Ninth Circuit reversed the judgment of the district court and remanded the case for further proceedings in order to determine "in the first instance whether the no-employment provision constitutes a restraint of a substantial character to Dr. Golden's medical practice."

Employer Cannot Be Liable For Failure To Prevent Harassment If No Actionable Harassment Has Occurred

Dickson v. Burke Williams, Inc., 234 Cal. App. 4th 1307 (2015)

Domaniqueca Dickson, a massage therapist, sued Burke Williams (a spa), alleging that she was subjected to harassing and discriminatory conduct by two customers of the spa. The case went to trial, and the jury returned a special verdict finding Burke Williams not liable for sex discrimination; sexual harassment; racial harassment; retaliation; or failure to prevent racial harassment. Specifically, as to the claims for racial and sexual harassment, the jury found that while Dickson was "subjected to unwanted harassing conduct," such conduct was "not severe or pervasive" and, therefore, not actionable. Nevertheless, the jury found Burke Williams liable for failure to take reasonable steps to prevent sexual harassment and awarded Dickson $35,000 in compensatory and $250,000 in punitive damages. The trial court denied Burke Williams' motion for judgment notwithstanding the verdict, but the Court of Appeal reversed, holding that an employer cannot be liable for failure to prevent harassment if the plaintiff fails to prove actionable harassment actually has occurred.

$180,817 In Fees Were Properly Awarded Against Company That Prosecuted Trade Secrets Claim In Bad Faith

Cypress Semiconductor Corp. v. Maxim Integrated Prods., Inc., 2015 WL 1911121 (Cal. Ct. App. 2015)

Cypress Semiconductor sued Maxim Integrated Products, alleging that Maxim had misappropriated a trade secret ("...or was in the process of doing so") when it sought to hire away from Cypress specialists in touchscreen technology, a field in which Cypress and Maxim compete. After failing to secure a temporary restraining order and failing to obtain an order placing under seal evidence derived by Maxim from public sources, Cypress voluntarily dismissed the action. Maxim then filed a motion for recovery of its attorneys' fees and costs in the amount of $180,817 pursuant to Cal. Civil Code § 3426.4, which authorizes such an award to a prevailing party where a claim for misappropriation of trade secrets is found to have been made in bad faith. The trial court granted Maxim's motion, and the Court of Appeal affirmed, holding that Maxim "did no more ...than attempting to recruit the employees of a competitor, which Maxim was entitled to do under the laws of this state."

Courts Can Provide Narrow Review Of EEOC's Pre-litigation Conciliation Efforts

Mach Mining, LLC v. EEOC, 575 U.S. ___, 2015 WL 1913911 (2015)

A female coal miner filed a charge with the EEOC, alleging that Mach Mining had refused to hire her because of her sex. The EEOC investigated the allegation and found reasonable cause to believe that Mach Mining had discriminated against the complainant and a class of women who had similarly applied for mining jobs. In correspondence to the employer, the EEOC invited the company and the complainant to participate in "informal methods" of dispute resolution and promised that a representative from the EEOC would soon "contact [them] to begin the conciliation process." Approximately a year later, the EEOC sent Mach Mining a second letter stating that "such conciliation efforts as are required by law have occurred and have been unsuccessful" and that any further efforts at conciliation would be "futile." The EEOC then sued Mach Mining for sex discrimination in hiring. In its answer to the complaint, Mach Mining asserted that the EEOC had failed to "conciliate in good faith" prior to filing the lawsuit. The district court agreed with Mach Mining that it should engage in a review to determine whether the EEOC had made a "sincere and reasonable effort to negotiate." The United States Court of Appeals for the Seventh Circuit reversed, holding that the EEOC's efforts to conciliate are "not subject to judicial review." The United States Supreme Court in this opinion vacated the judgment of the Seventh Circuit and held that a court may engage in a "narrow review" of whether the EEOC satisfied its statutory obligation to engage in conciliation efforts and that if the court determines the EEOC did not sufficiently engage in such efforts, "the appropriate remedy is to order the EEOC to undertake the mandated efforts to obtain voluntary compliance."

Whistleblower Was Required To Exhaust Administrative Remedies Before Filing Lawsuit

Gallup v. Superior Court, 235 Cal. App. 4th 682 (2015)

Emily Gallup sued her former employer, the Superior Court of Nevada County ("SCNC"), under Cal. Labor Code § 1102.5(b) for alleged retaliation against her for engaging in protected activity when she complained to her supervisor and other management that the Family Court Services Department was not providing services in compliance with the law. SCNC demurred to this claim on the ground that Gallup had failed to exhaust administrative remedies under Labor Code § 98.7. The trial court overruled the demurrer, and a jury found in Gallup's favor, awarding her more than $313,000 in damages. In this appeal, the SCNC asserted that the trial court erred when it overruled the demurrer. The Court of Appeal agreed and reversed the judgment, holding that subsequent amendments to the Labor Code from 2013 (stating that exhaustion of administrative remedies is not required to maintain an action) are not retroactive or declaratory of existing law. The Court further held that Section 1102.5 (prior to being amended) did require exhaustion of administrative remedies. *See also Tamosaitis v. URS, Inc.*, 781 F.3d 468 (9th Cir. 2015) (whistleblower employee who worked at a nuclear energy site failed to exhaust administrative remedies under the Energy Reorganization Act as to some defendants but could proceed with claims against another who received adequate notice; as to that defendant, there was adequate evidence to defeat summary judgment; and employee was entitled to jury trial as to some claims).

Employer Properly Removed Case To Federal Court Under CAFA

Reyes v. Dollar Tree Stores, Inc., 781 F.3d 1185 (9th Cir. 2015)

Dollar Tree Stores removed this action to federal court a second time (after it was removed and remanded two years previously) following the state court's certification of a broader class. The district court ordered the action remanded based upon untimely removal, but the United States Court of Appeals for the Ninth Circuit reversed the remand order with instructions for the district court to exercise federal jurisdiction under the Class Action Fairness Act ("CAFA"). The Court held that the second removal to federal court was timely because Dollar Tree removed within 30 days of the class certification order and that there was an "unchallenged, plausible assertion" that the jurisdictional requirements of CAFA were satisfied. *See also Navarro v. Encino Motorcars, LLC*, 780 F.3d 1267 (9th Cir. 2015) (service advisors who work at a car dealership are not exempt from the overtime requirements of the Fair Labor Standards Act applicable to "any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles").

60-Year-Old Pilot Was Properly Barred From Active Duty

Weiland v. American Airlines, Inc., 778 F.3d 1112 (9th Cir. 2015)

Henry Weiland was a "check airman" when he turned 60 years old on December 7, 2007. Until December 13, 2007, airline pilots at air carriers were subject to the FAA's "Age 60 Rule," which required air carriers to cease scheduling pilots from operating aircraft when they turned 60 years old. The Age 60 Rule was abrogated by passage of the Fair Treatment for Experienced Pilots Act ("FTEPA"), which (as of December 13, 2007) delayed the age at which pilots must cease flying from 60 to 65 years of age. After American Airlines refused to reinstate Weiland based on the Age 60 Rule, he filed a claim of age discrimination against the airline in federal court, and the airline responded with a motion to dismiss, which the district court granted. The United States Court of Appeals for the Ninth Circuit affirmed dismissal of Weiland's claim, holding that Weiland does not qualify for any of the FTEPA's exceptions to nonretroactivity.

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