Proskauer

California Employment Law Notes

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Church Affiliate Is Exempt From FEHA Liability, But Liable for $1.9 Million On Other Theories

Mathews v. Happy Valley Conference Ctr., 2019 WL 6769659 (Cal. Ct. App. 2019)

Jeremiah Mathews worked as a maintenance supervisor and cook for Happy Valley Conference Center, which is a subordinate affiliate of Community of Christ (a church). Mathews alleged his employment was terminated in retaliation for his having reported harassment of a younger male employee by Happy Valley's female executive director. Following a trial, a jury awarded Mathews $900,000 in damages (including punitive damages) and almost $1 million in attorney's fees. In this appeal, the Court of Appeal reversed the judgment as to the retaliation claim arising under the Fair Employment and Housing Act ("FEHA"), holding that defendants were entitled to rely upon the "religious association or corporation" exemption of Cal. Gov't Code § 12926(d) and that they had neither waived nor were they estopped from relying upon the exemption. The appellate court otherwise affirmed the judgment in favor of Mathews, upholding the trial court's determination that the church and Happy Valley were a single employer within the meaning of Title VII; that defendants were liable for breach of an implied contract and that they had violated the whistleblower statute (Cal. Lab. Code § 1102.5) for which Mathews was properly awarded $500,000 in punitive damages.

Disability Discrimination, Harassment and Retaliation Claims Were Properly Dismissed

Doe v. Department of Corr. & Rehab., 2019 WL 6907515 (Cal. Ct. App. 2019)

John Doe, who worked as a psychologist at Ironwood State Prison, alleged discrimination, harassment and retaliation based upon a disability; Doe also alleged that the employer violated FEHA in that it failed to accommodate his two alleged disabilities (asthma and dyslexia) by failing to relocate him to a "cleaner and quieter office" and provide him with computer equipment he had requested. The trial court granted summary judgment to the employer, and the Court of Appeal affirmed, holding that the discrimination and retaliation claims failed because Doe had not presented evidence that he was subjected to an adverse employment action – rejecting Doe's assertion that criticizing his work during an "interrogation-like meeting" and engaging in other "relatively minor conduct" did not satisfy the requirements of the statute.

The Court further held as a matter of law that the employer's rejection of Doe's accommodation requests did not constitute an adverse employment action. Similarly, the Court held there was no evidence of conduct that rose to the level of actionable harassment: "Workplaces can be stressful and relationships between supervisors and their subordinates can often be contentious. But FEHA was not designed to make workplaces more collegial." Finally, the Court rejected Doe's claim that the employer had failed to engage in the interactive process or accommodate an alleged disability because the doctors' notes that Doe submitted were not sufficient to place the employer on notice that Doe suffered from a disability.

Employer That "Mistakenly" Terminated Employee On Disability Leave May Be Liable For Discrimination

Glynn v. Superior Court, 42 Cal. App. 5th 47 (2019)

John Glynn worked as a pharmaceutical sales representative before he commenced a medical leave of absence for a serious eye condition (myopic macular degeneration). Glynn's doctor provided a medical certification designating his work status as "no work" because Glynn "can't safely drive." Although the employer's reasonable accommodation policy lists "reassignment to a vacant position" as a potential accommodation for a disability, Glynn applied for but did not receive an offer of another position within the company that did not require driving. Approximately six months after Glynn's medical leave of absence began, his employment was terminated after a "temporary benefits department employee" determined (erroneously) that Glynn was no longer eligible to remain on "inactive status." Approximately nine months later (after Glynn had filed this lawsuit), the employer conceded the error and offered to reinstate Glynn unconditionally with full back pay, which Glynn rejected because no specific position was offered and because he did not believe the offer was "made in good faith."

The trial court granted summary adjudication against Glynn on his claims for disability discrimination; retaliation; failure to prevent discrimination and harassment; violation of the whistleblower statute; wrongful termination and intentional infliction of emotional distress. In this writ proceeding, the Court of Appeal issued a writ of mandate directing the trial court to vacate its order dismissing Glynn's claims for disability discrimination; retaliation; failure to prevent discrimination; wrongful termination in violation of public policy. The Court held that "even assuming the employer's mistakes were reasonable and made in good faith, a lack of animus does not preclude liability for a disability discrimination claim." Similarly, the Court held that four emails upon which Glynn relied demonstrated he engaged in "protected activity" by complaining he was not being accommodated for his disability. *See also Silbaugh v. Chao*, 942 F.3d 911 (9th Cir. 2019) (amended Title VII complaint filed by FAA employee related back to the timely filed original complaint, which had failed to name the proper defendant).

Defamation and Wrongful Termination Claims Against the *Los Angeles Times* Were Properly Dismissed

Rall v. Tribune 365, LLC, 2019 WL 6887261 (Cal. Ct. App. 2019)

Frederick Theodore Rall III, a political cartoonist and blogger, sued the *Los Angeles Times* after it published a "note to readers" and (later) a more detailed report questioning the accuracy of a blog post that Rall wrote for the *Times*. Rall then sued the *Times* for defamation and wrongful termination in violation of public policy. The *Times* responded to the complaint by filing an anti-SLAPP motion on the ground that its actions involved "matters of public interest well within the scope of the anti-SLAPP statute" and that the *Times* had made a "constitutionally protected editorial decision to stop publishing [Rall's] work." The trial court granted the motion to dismiss, and the Court of Appeal (in an earlier opinion) affirmed. The California Supreme Court granted review but then transferred the matter back to the Court of Appeal for reconsideration in light of the Supreme Court's opinion in *Wilson v. Cable News Network, Inc.*, 7 Cal. 5th 871 (2019). In this opinion, the Court of Appeal "reconsidered" its original opinion but "having done so, we again affirm the trial court's orders." *See also Long Beach Unified School Dist. v. Margaret Williams, LLC*, 2019 WL 7343474 (Cal. Ct. App. 2019) (school district's cross complaint for indemnity against contractor arose from protected activity in the form of the contractor's underlying action against the district, affirming dismissal under anti-SLAPP statute).

Court Properly Refused To Dissolve Injunction Involving Trade Secret Misappropriation

Global Protein Prods., Inc. v. Le, 42 Cal. App. 5th 352 (2019)

Global Protein Products, Inc. ("GPP") successfully sued its former employee Kevin K. Le for misappropriation of trade secrets, breach of contract and unfair competition and obtained a stipulated permanent injunction against him and his company from "acquiring, disclosing, using, or attempting or threatening to acquire, disclose, or use, GPP's trade secrets" or directly or indirectly soliciting any of GPP's customers using GPP's trade secrets. Seven and a half years later, GPP filed an ex parte application for an order to show cause regarding contempt associated with an alleged violation of the injunction. The trial court denied Le's motion to modify or dissolve the injunction, and the Court of Appeal agreed, holding that there was sufficient evidence to support the trial court's implied determination that GPP has a valid trade secret notwithstanding the publication of certain patent applications that allegedly disclosed and thereby "destroyed GPP's trade secret."

Trial Court Properly Denied Class Certification Of Meal/Rest Break Claims

Cacho v. Eurostar, Inc., 2019 WL 7180349 (Cal. Ct. App. 2019)

David Cacho and Regina Silva asserted class claims against their former employer (Eurostar), alleging Eurostar violated California wage and hour laws by failing to provide employees with required meal and rest breaks and compelling to employees to work off the clock at Eurostar's Warehouse Shoe Sale retail shoe stores in California. The trial court denied class certification to the claims on the ground that plaintiffs failed to demonstrate common issues of law or fact predominated over individual issues and plaintiffs' claims were not typical of the class. The Court of Appeal affirmed denial of class certification, holding Eurostar did not have a uniform practice of denying required rest breaks. The Court also held that individual questions predominate because the evidence of employees feeling pressured to work off the clock was "anecdotal and specific to particular managers, circumstances and locations." *See also Williams v. Impax Labs., Inc.*, 41 Cal. App. 5th 1060 (2019) (class representative who failed to appeal earlier order striking class allegations could not appeal from second order striking same allegations from amended pleading).

Court Affirms Jury Verdict Finding Safeway Manager Was Exempt From Overtime

Safeway Wage & Hour Cases, 2019 WL 6954322 (Cal. Ct. App. 2019)

Following a jury trial, the trial court entered judgment in favor of Safeway on the ground that plaintiff William Cunningham was subject to the executive exemption and was, therefore, exempt from overtime. At trial, the main dispute was whether Cunningham spent most of his work time stocking shelves and checking (i.e., doing nonexempt work) or performing managerial tasks such as supervising, training and disciplining employees, assessing store conditions and filling out financial reports (i.e., doing exempt work). The Court of Appeal affirmed the judgment in favor of Safeway, holding that "a task does not become exempt merely because the manager undertakes it in order to contribute to the smooth functioning of the store. An instruction on the consideration of the manager's purpose, where appropriate, must inform the jury of relevant limiting principles outlined in the applicable regulations and recognized by our prior decisions. Additionally, we find no abuse of discretion in the admission of the contested expert testimony."

Employer's Wage Statement Failed To Provide Legal Name Of Employer

Noori v. Countrywide Payroll & HR Solutions, Inc., 2019 WL 7183403 (Cal. Ct. App. 2019)

Mohammed Noori sued his former employer for violation of Cal. Lab. Code § 226(a) (setting forth certain very specific statutory requirements for itemized wage statements) based on the fact that the wage statements identified "CSSG" as the "name of the legal entity that is the employer" even though CSSG is not listed with the California Secretary of State, but is a fictitious business name for Countrywide Payroll & HR Solutions, Inc. Noori also alleged that Countrywide failed to provide payroll records to him that indicated the employer's name and address. Finally, Noori alleged violations of the Private Attorneys General Act ("PAGA"). The trial court sustained Countrywide's demurrer to the complaint and dismissed the lawsuit, but the Court of Appeal reversed in part, holding "CSSG is not Countrywide's registered name, nor is it a minor truncation. CSSG is a construct… which may or may not have meaning to Countrywide employees." As for the "failure to maintain wage statement records" claim, the Court held the claim failed for lack of any alleged injury to Noori. Finally, the Court held that Noori had provided adequate notice to the employer under PAGA.

Ninth Circuit Affirms $54.6 Million Verdict In Favor of Wal-Mart Truckers

Ridgeway v. Walmart Inc., 2020 WL 55073 (9th Cir. 2020)

In this class action, truckers for Wal-Mart alleged they should have been but were not paid for layovers, rest breaks and inspections. The district court determined and the Ninth Circuit affirmed that the time drivers spent on layovers is compensable if Wal-Mart exercised control over the drivers during those breaks – "Wal-Mart's layover policy imposed constraints on employee movement such that employees could not travel freely and avail themselves of the full privileges of a break." As for the amounts awarded for rest breaks and inspections, the Court held that "Wal-Mart's pay structure impermissibly averaged a trucker's pay within a single hour, when it should have provided separate compensation for rest periods." The Court further held that the district court did not err in certifying a class and allowing representative evidence as proof of classwide damages – including testimony from plaintiffs' expert witness. Finally, the Court held that the district court properly denied liquidated damages to plaintiffs because Wal-Mart had acted reasonably and in good faith. *See also Murphy v. SFBSC Mgmt., LLC*, 2019 WL 6721190 (9th Cir. 2019) (approval of class action settlement involving misclassification of exotic dancers is reversed because notice was "sent only once by mail" and because of "subtle signs of implicit collusion" involving a disproportionate cash distribution to attorneys' fees, etc.).

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