Proskauer

California Employment Law Notes

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Hollywood Producer Is Not Liable For Drowning Death Of Executive Assistant

Musgrove v. Silver, 82 Cal. App. 5th 694 (2022)

As part of an entourage of family and friends, a Hollywood producer (Joel Silver) brought his executive assistant (who was employed through Silver's company) as well as a French chef Silver personally employed to a luxurious resort in Bora Bora, French Polynesia to attend the August 2015 wedding of actress Jennifer Aniston. Tragically, the executive assistant (Carmel Musgrove) drowned when she went for a midnight swim in the lagoon outside her overwater bungalow. The drowning was accidental and related to Musgrove's ingestion of alcohol and cocaine in the hours prior to the swim. Musgrove's parents sued Silver on the theory that he was (1) directly liable because he paid all resort-related expenses of the trip, including for the alcohol Musgrove had ingested; and (2) vicariously liable because he employed the chef who had met up with Musgrove for a "late-night rendezvous" during which she drank half a bottle of wine and snorted a "significant amount of cocaine" before drowning.

The trial court granted Silver's motion for summary judgment, and the Court of Appeal affirmed the dismissal, holding that Silver was not liable under either theory. The appellate court agreed with the trial court that Silver had no "special relationship" that would legally obligate him to assume control of Musgrove's safety and welfare during the trip; moreover, the Court affirmed the trial court's determination that the chef's conduct was outside the scope of his employment with Silver. *See also Colonial Van & Storage, Inc. v. Superior Court*, 76 Cal. App. 5th 487 (2022) (employer is not liable for gunshot injuries employees suffered while attending an off-site meeting at a private residence of a coworker); *McCullar v. SMC Contracting, Inc.*, 2022 WL 181422 (Cal. Ct. App. 2022) (employee of subcontractor may not sue contractor for injuries incurred on the job).

Employer May Not Inquire Into Former Employee's Immigration Status

Manuel v. Superior Court, 82 Cal. App. 5th 719 (2022)

Rigoberto Jose Manuel sued his former employer, BrightView Landscape Services, Inc., for wrongful termination after he was injured on the job. Manuel alleged his employment was terminated in retaliation for his job injury; BrightView asserted that Manuel failed to return to work due to federal immigration authorities' questioning his eligibility to work in the United States. Manuel objected to BrightView's discovery requests inquiring into his immigration status, but the trial court granted BrightView's motion to compel further responses. In this writ proceeding, however, the Court of Appeal granted Manuel's petition for a peremptory writ of mandate and directed the trial court to deny BrightView's motion compelling Manuel to provide further responses. The appellate court held that Cal. Lab. Code § 1171.5 precludes discovery of a person's immigration status unless the person seeking to make such an inquiry has shown by clear and convincing evidence that the inquiry is necessary in order to comply with federal immigration law.

Workers' Comp Determination Does Not Govern Outcome Of Discrimination Case

Kaur v. Foster Poultry Farms LLC, 2022 WL 4243090 (Cal. Ct. App. 2022)

Gurdip Kaur sued her former employer, Foster Farms, for discrimination based on disability and race/national origin, retaliation and violation of the whistleblower statute (Cal. Lab. Code § 1102.5). Prior to filing this lawsuit, Kaur filed a petition against Foster Farms with the Workers' Compensation Appeals Board (the "WCAB"), asserting a violation of Cal. Lab. Code § 132a (prohibiting retaliation against an employee who has filed a workers' compensation claim). After the WCAB denied Kaur's Section 132a claim, Foster Farms filed a successful motion for summary judgment in the civil action, claiming the WCAB's ruling should be accorded res judicata/collateral estoppel effect. The Court of Appeal reversed the judgment, holding that the WCAB ruling in favor of Foster Farms did not dispose of Kaur's claims of disability discrimination, retaliation and violation of the whistleblower statute. However, the court affirmed summary adjudication of Kaur's claim of race/national origin discrimination against two supervisors on statute of limitations grounds.

Workplace Violence Restraining Order Reversed Absent Credible Threat Of Violence

Technology Credit Union v. Rafat, 82 Cal. App. 5th 314 (2022)

Technology Credit Union ("TCU") obtained a Workplace Violence Restraining Order ("WVRO") against one of its members (Matthew Mehdi Rafat) based on TCU's evidence that Rafat allegedly made a credible threat of violence against M.L., one of TCU's employees. The Court of Appeal reversed the WVRO after concluding that Rafat's conduct was "indisputably rude, impatient, aggressive, and derogatory but there was not sufficient evidence produced by TCU linking any of Rafat's statements or conduct to any implied threat of violence: The only threats he made were of litigation and complaints to a federal agency. His actions toward M.L. consisted of berating her, complaining to her supervisor, and posting an accurate video of their March 24 interaction on YouTube."

AutoZone May Not Have "Provided" Suitable Seating To Employees

Meda v. AutoZone, Inc., 81 Cal. App. 5th 366 (2022)

Monica Meda worked as a sales associate at an AutoZone for approximately six months before quitting and suing for violation of the Private Attorneys General Act ("PAGA"), asserting AutoZoners (the operating company for AutoZone) had failed to provide suitable seating to employees at the cashier and parts counter workstations. AutoZoners obtained summary judgment in the trial court on the ground that Meda had no standing to bring a PAGA action because it satisfied the seating requirement by making two chairs available to its associates. However, the two chairs were not placed at the cashier or parts counter workstations (they were outside the manager's office), and Meda contended no one told her the chairs were available for use at the front counter workstations, and she never saw anyone else use a chair at those workstations. The Court of Appeal reversed the summary judgment and held that "where an employer has not expressly advised its employees that they may use a seat during their work and has not provided a seat at a workstation," the inquiry as to whether the employer has "provided" suitable seating may be "fact-intensive and may involve a multitude of job- and workplace-specific factors," making resolution at the summary judgment stage "inappropriate."

FEHA Employee Who Was Working Remotely May Sue In County Where She Lived

Malloy v. Superior Court, 2022 WL 4298371 (Cal. Ct. App. 2022)

Eleanor Malloy began working remotely for her employer (which was located in Orange County) at her home in Los Angeles County in March 2020 due to the COVID-19 pandemic. Malloy filed a complaint in the Los Angeles Superior Court, alleging pregnancy discrimination under the California Fair Employment and Housing Act ("FEHA"). In response, the employer filed a motion to change venue to Orange County where it contended the alleged wrongful acts were committed and where all records relating to the lawsuit were maintained. The trial court granted the employer's motion, but the Court of Appeal granted Malloy's petition for writ of mandate and ordered the trial court to vacate its order granting the employer's motion to change venue and further ordered the trial court to deny the motion. The Court of Appeal held that venue was proper in Los Angeles County because the employer "interfered with Malloy's leave [of absence] rights in Los Angeles County, where they were being exercised, not in Orange County." Moreover, the Court reasoned that Malloy would have continued to work in Los Angeles County but for the unlawful employment practices.

Employee Who Left Work To Care For Ill Relative Did Not Quit Her Employment And Was Eligible For Unemployment Benefits

Johar v. CUIAB, 2022 WL 4139848 (Cal. Ct. App. 2022)

Reena Johar, a home improvement sales person, left work to care for a terminally ill relative, but after just one week, the employer "decided she had quit" and gave her no new sales appointments. Although Johar told the Employment Development Department that she lost her job due to a "temporary layoff," the employer claimed that Johar's failure to provide a return date or otherwise communicate with her supervisor while she was away amounted to a "voluntary quit," thus making her ineligible for unemployment benefits. The Court of Appeal held that Johar was eligible for unemployment benefits because she left her job in "emergency circumstances with the employer's approval," and the employer had not overcome the presumption that she had not voluntarily quit by providing evidence that Johar "positively repudiated her obligation to return in clear terms."

Related Professionals

- **Anthony J. Oncidi**
  Partner