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California Employment Law Notes

May 2023

Art Teacher's Age Discrimination Case May Not Be Barred By "Ministerial Exception"

Atkins v. St. Cecilia Catholic Sch., 2023 WL 3142316 (Cal. Ct. App. 2023)

Frances Atkins was a long-term employee of St. Cecilia Catholic School, and in her final year with the school, she worked part-time as an art teacher and office administrator. Following the termination of her employment, Atkins sued the school for age discrimination in violation of the California Fair Employment and Housing Act. The trial court granted summary judgment to the school based on the ministerial exception, which precludes certain employment claims to be brought against a religious institution by its "ministers." The Court of Appeal reversed, holding that although the school did not waive the ministerial exception defense by failing to assert it as an affirmative defense, there were triable issues of fact as to whether the ministerial exception applied to Atkins' position because she did not teach religion to the students nor did she lead the students in any religious activities or services or ever attend such services herself. Despite the fact that Atkins prayed with the students in her art class and promoted the Archdiocese of Los Angeles' six tasks of catechesis by encouraging "Christ-like" behavior, there were triable issues of fact as to whether educating students in the Catholic faith lay at the core of her job responsibilities, which included the dual roles of teaching and acting as a school administrator.

Users May Have Privacy Interest In Emails Sent Over Company Network Absent Express Policy

Militello v. VFARM 1509, 89 Cal. App. 5th 602 (2023)

Shauneen Militello brought a 22-count complaint against fellow co-owners of a cannabis manufacturing and distribution company, including Ann Lawrence. Lawrence moved to disqualify Militello's counsel, arguing that Militello had improperly provided to her counsel private emails between Lawrence and her husband that were sent on the company's email network, which Militello's attorney attempted to use in the litigation in violation of the spousal communications privilege. The trial court agreed with Lawrence and disqualified Militello's attorney, and the Court of Appeal affirmed, holding that private emails sent on a company computer network could not be used against the user where the user had a reasonable expectation of privacy with respect to personal emails sent over the company network. The appellate court noted that, because Lawrence was not "on notice" that her emails were not confidential, Militello failed to prove that Lawrence did not have a reasonable expectation of privacy. In so finding, both the trial court and Court of Appeal emphasized that Militello provided no evidence that the company had a policy of monitoring individual email accounts or any policy prohibiting the use of the company's email account for personal communications, which might have otherwise defeated Lawrence's reasonable expectation of privacy.

Unions, Legislature Dealt Yet Another Blow in AB 5 Appeal

Olson v. State of Cal., 62 F.4th 1206 (9th Cir. 2023)

In the latest in a string of defeats for the State of California, a Ninth Circuit panel unanimously held that AB 5 (the anti-independent contractor law) may violate the equal protection rights of independent contractor drivers and the gig companies that retain them. The panel found that the plaintiffs plausibly alleged that AB 5 had unfairly targeted drivers and companies such as Uber and Lyft. Specifically, the panel noted that a legislative desire to harm a politically unpopular group is not a legitimate governmental interest even under the "fairly forgiving" rational basis test for judicial review. For example, the panel cited multiple public statements of AB 5's sponsor (former Assemblywoman and once and future labor leader Lorena Gonzalez) who singled out and publicly disparaged plaintiffs by name, which was evidence that the legislation's primary impetus may have been animus toward them. Additionally, the plaintiffs plausibly alleged that they were singled out in that multiple companies and workers were able to lobby for and obtain carve outs from the strict provisions of the law, which was "starkly inconsistent" with AB 5's stated purpose of protecting "workers' basic rights."

Related Professionals

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