Proskauer

California Employment Law Notes

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Employee Was Not Entitled To Punitive Damages For Labor Code Violations

Brewer v. Premier Golf Properties, LP, 168 Cal. App. 4th 1243 (2008)

Christine Brewer, a waitress who had been employed at the Cottonwood Golf Club, quit her job and filed a complaint seeking damages for various alleged violations of the California Labor Code. After a jury trial, Brewer was awarded less than $1,000 for unpaid regular and overtime wages, $6,000 for unpaid meal and rest breaks, $4,000 for pay stub violations, and $15,300 for minimum wage penalties. In a second phase of the trial, the jury awarded $195,000 in punitive damages to Brewer. In addition, the trial court awarded Brewer $64,710 in attorney's fees (less than half of what she had requested). On appeal, the Court of Appeal held that "punitive damages are not recoverable when liability is premised solely on the employer's violation of the Labor Code statutes that regulate meal and rest breaks, pay stubs, and minimum wage laws." The Court also reversed the attorney's fee award and ordered that the amount be reconsidered by the trial court. *Cf. Marin v. Costco Wholesale Corp.*, 2008 WL 5341848 (Cal. Ct. App. 2008) (DLSE Manual section regarding calculation of overtime on "flat sum bonuses" is disregarded as not having the force of law).

Employee's Overtime Claims Were Barred By Settlement Agreement

Larner v. Los Angeles Doctors Hosp. Associates, LP, 168 Cal. App. 4th 1291 (2008)

Josephine Larner, a nurse, sued her former employer, a hospital, for allegedly unpaid overtime. Larner brought the action on behalf of herself and all current and former non-exempt workers employed by defendants who failed to receive required premium overtime wages for the previous four years. The hospital successfully moved for summary adjudication of Larner's claim after which she filed an amended complaint. The trial court subsequently denied Larner's motion to certify two separate classes – one for improper calculation of overtime rates and one for failure to keep accurate and complete wage records – on the grounds that the motion was unduly tardy, Larner's claims were not typical of those of the proposed classes and the class definitions were overbroad. The parties then reached a settlement of Larner's individual claims two days before the trial date, but they agreed Larner could reserve her right to seek appellate review of the trial court's orders granting summary adjudication to the hospital and denying class certification. The Court of Appeal held that the settlement between the parties rendered Larner's appeal moot. *Cf. United Steel Workers, AFL-CIO v. Shell Oil Co.*, 2008 WL 5143873 (9th Cir. 2008) (rule requiring unanimous consent to removal of multi-defendant action is inapplicable under the Class Action Fairness Act).

Corporate Officers Are Liable For $2.5 Million In Civil Penalties For Underground Tank Leak

People v. Roscoe, 2008 WL 5378254 (Cal. Ct. App. 2008)

John and Ned Roscoe, officers, directors, and shareholders of a family company (The Customer Company) whose underground storage tank leaked over 3,000 gallons of gasoline into the ground, were found liable along with the company for $2,493,250 in civil penalties under the state's "tank laws." The Court of Appeal affirmed the judgment, holding that under the responsible corporate officer doctrine, an officer may be considered an "operator" of the tank and can incur personal liability. The Court further held that the penalties were proportional and not excessive. *Cf. Tverberg v. Fillner Constr., Inc.*, 168 Cal. App. 4th 1278 (2008) (general contractor owed duty of care to independent contractor hired by subcontractor).

Court Commissioner May Proceed With Age Discrimination Claim

DeJung v. Superior Court, 2008 WL 5265525 (Cal. Ct. App. 2008)

Theodore DeJung, a former part-time commissioner of the Sonoma County Superior Court, filed a lawsuit alleging age discrimination after he was not selected to become a full-time commissioner. Before DeJung's application was denied (in favor of a 43 year old), the Court's presiding judge told him that the executive committee "want[s] somebody younger [for the full-time commissioner's position], maybe in their 40's." In addition, the presiding judge told DeJung's former bailiff that "we're looking for someone younger [than DeJung for the position]." The trial court (the Sonoma County Superior Court) granted the Superior Court's motion for summary judgment based on the doctrine of discretionary immunity for public employers and because DeJung had failed to raise a triable issue of material fact regarding his claim. The Court of Appeal reversed, holding that discretionary immunity does not apply to discrimination actions brought under the Fair Employment and Housing Act. Further, the Court held that under the "cat's paw" doctrine, evidence of discriminatory animus by a significant participant in the employment decision (the presiding judge) raised an inference that the employment decision itself was discriminatory, even absent evidence that others in the process harbored such animus.

Employee May Proceed With Sexual Orientation Discrimination Claim

Dominguez v. Washington Mut. Bank, 168 Cal. App. 4th 714 (2008)

Yoko Dominguez, a former temporary employee of Washington Mutual assigned to processing outgoing mail, alleged that a co-worker (Javier Gutierrez) had made crude and offensive comments to her after learning that Dominguez was a lesbian. Dominguez complained about Gutierrez's comments to her supervisor's supervisor (who was also a lesbian) as well as to her direct supervisor who "might have given" Gutierrez verbal warnings about his conduct. Shortly thereafter, Dominguez's supervisor invited her to apply to become a full-time, regular employee, but two days after she applied, she was fired because she was "frequently late for work." In her lawsuit, Dominguez alleged discrimination, harassment and retaliation in violation of the Fair Employment and Housing Act; the trial court granted defendants' summary judgment motions on statute of limitations grounds and because Dominguez had no evidence to rebut WaMu's claim that it fired Dominguez for a legitimate nondiscriminatory reason (her tardiness).

The Court of Appeal reversed in part, holding that Dominguez timely filed her administrative complaint with the California Department of Fair Employment and Housing ("DFEH"). Although Gutierrez's verbal taunts ceased in May of 2002 and Dominguez did not file her DFEH complaint until August of 2003, Gutierrez's post-May 2002 conduct (e.g., jamming the wheels of Dominguez's pallet jack, blocking her access to her work stations with heavy boxes and otherwise interfering with the performance of her job) may have constituted a continuing violation that extended through August of 2002 (when her employment was terminated). Further, the Court held that triable issues of fact existed as to whether Gutierrez's conduct was sufficiently hostile and pervasive and whether the stated reason for terminating Dominguez was a pretext (given the almost contemporaneous invitation to apply for full-time employment with WaMu). Finally, the Court held that Dominguez had waived her punitive damages claim against WaMu by failing to properly address it on appeal and that her retaliation claim against Gutierrez was improper in light of *Jones v. The Lodge at Torrey Pines P'ship*, 42 Cal. 4th 1158 (2008). *Cf. Young v. Exxon Mobil Corp.*, 168 Cal. App. 4th 1467 (2008) (supervisor whose defense was paid by employer was entitled to recover only $1.00 in attorney's fees even though employee's claims against supervisor were frivolous and brought in bad faith).

Starbucks Applicants With No Prior Marijuana Convictions Could Not Pursue Lawsuit For Labor Code Violations

Starbucks Corp. v. Superior Court, 168 Cal. App. 4th 1436 (2008)

Plaintiffs filed a class action lawsuit on behalf of themselves and approximately 135,000 other Starbucks applicants who had sought jobs at some 1,500 Starbucks locations throughout California. Plaintiffs contended that the Starbucks application violated California Labor Code §§ 432.7 and 432.8, prohibiting employers from asking about marijuana-related convictions that are more than two years old, seeking statutory damages of $200 per applicant – a "whopping $26 million." The trial court denied Starbucks' motion for summary judgment, but the Court of Appeal granted its petition for a writ of mandate directing the trial court to enter summary judgment for Starbucks. The Court of Appeal held that plaintiffs' lawsuit suffered from two "fundamental flaws" – first, Starbucks attempted to disclaim an interest in the prohibited information in language contained in the application itself; and, second, none of the plaintiffs had any marijuana-related convictions to reveal. As for the first point, the Court did note that while it had no problem with the language of the California disclaimer (advising California applicants that they could omit any marijuana-related convictions that were more than two years old), there was a "significant problem with its placement…[because it was] submerged in a veritable sea of boldface type." Said the Court, "the unintended consequence of Starbucks' one-size-fits-all style for its employment applications is a lack of clarity for which California law strives." *Cf. Crab Addison v. Superior Court*, 2008 WL 5401587 (Cal. Ct. App. 2008) (employer required to provide plaintiff with names and contact information of putative class members).

Attorney And Her Clients Were Properly Sanctioned For Conduct Relating To Disclosure Of Trade Secrets

Wallis v. PHL Associates, Inc., 2008 WL 4989118 (Cal. Ct. App. 2008)

The trial court imposed approximately $43,000 in sanctions against Hygieia Biological Laboratories, its principals and their attorney in this case involving alleged misappropriation
of trade secrets. During the course of the litigation, the parties agreed to a protective order, which the trial court issued, allowing the parties to file under seal certain confidential documents containing alleged trade secrets. PHL's attorney filed under seal a declaration in the case, including attachments which PHL contended were trade secrets. When the document later appeared in the court's publicly available file, Hygieia's attorney notified her clients of the accessibility of the information; in an attempt to defeat PHL's claim that the information contained trade secrets, Hygieia had third parties view and copy the declaration and the attachments. In response, PHL filed a motion for sanctions pursuant to Cal. Code Civ. Proc.
§ 128.5 on the ground that Hygieia and its attorney's actions were frivolous and taken in bad faith, which the trial court granted and the Court of Appeal affirmed.

Employer Was Not Entitled To Immunity Under Unclaimed Property Statute

Vondjidis v. Hewlett Packard Corp., 168 Cal. App. 4th 921 (2008)

Alexander Vondjidis was employed by Hewlett Packard at HP's Athens, Greece office in the 1970s. He purchased shares through HP's employee stock purchase plan and left HP in 1978. Although HP was aware of Vondjidis's home address in Athens (the address was listed in HP's personnel records), HP listed its Athens office (which closed in 1982) as Vondjidis's shareholder address of record. In 1993, HP transferred Vondjidis's shares to the State of California as unclaimed property. When Vondjidis learned of the transfer in 2001, he sued HP for breach of contract, negligence, breach of fiduciary duty, conversion and fraud. HP obtained summary judgment on the ground that it was immune from liability under California's unclaimed property statute. The Court of Appeal reversed the summary judgment, holding that HP was not entitled to immunity because HP knew of the owner's location (which had not changed since he left HP) and despite that knowledge transferred the shares to the state. The Court also held that HP was not entitled to summary judgment based on the applicable statute of limitations.

Voluntary, Written Authorization Required For Overpayment Deductions

In an opinion letter issued on November 25, 2008, the DLSE determined that an employer may make deductions from wages to reflect predictable and expected wage overpayments made in the immediately prior paycheck so long as the employer has obtained the employee's voluntary, written authorization to do so. *See* http://www.dir.ca.gov/dlse/OpinionLetters-byDate.htm.

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