Proskauer

California Employment Law Notes

January 2012

Insurance Claims Adjusters May Be Exempt Administrative Employees

Harris v. Superior Court, 2011 WL 6823963 (Cal. S. Ct. 2011)

Plaintiffs in this case are claims adjusters employed by two insurance companies. They filed four putative class actions, claiming they had been erroneously classified as exempt administrative employees and seeking damages based upon unpaid overtime. The court of appeal held as a matter of law that plaintiffs were non-exempt employees who were entitled to overtime pay. In this opinion, the California Supreme Court reversed the court of appeal and remanded the action with directions that the appellate court apply the appropriate legal standard. The Supreme Court stated that "[t]he precise question here is whether plaintiffs' work as claims adjusters is encompassed by the expanded language of the statute, wage orders, and federal regulations that delineate what work qualifies as administrative." The Court further held that while the "administrative/production worker dichotomy" (cited by the lower court) may be used as an "analytical tool," it was improperly applied in this case as a "dispositive test." Finally, the Supreme Court noted that it was "express[ing] no opinion on the strength of the parties' relative positions."

Attorney Was Properly Denied Precertification Discovery To Find A New Class Representative

Pirjada v. Superior Court, 201 Cal. App. 4th 1074 (2011)

Putative class representative Obaidul H. Pirjada filed a complaint on behalf of himself and a putative class of all security guards who had been employed in California by Pacific National Security, Inc. during the preceding four years. The complaint alleged a failure to provide meal-and-rest periods and various other wage-and-hour violations as well as a claim under the Unfair Competition Law. After Pirjada settled his individual claims through direct negotiations with Pacific National's CEO, Pirjada's counsel was granted leave to amend the complaint to name a new class representative but his motion to compel precertification discovery in order to identify a suitable class representative was denied. The Court of Appeal denied Pirjada's counsel's petition for a writ of mandate challenging the discovery order and vacated the previously ordered stay of the order to show cause regarding dismissal. In so ruling, the Court held that the trial court did not abuse its discretion to deny precertification discovery to Pirjada's counsel in light of the trial court's granting leave for counsel to use "informal means to identify potential replacement class representatives."

Employee-Attorney's $440,000 Verdict Against LA Housing Authority Is Affirmed

Cordero-Sacks v. Housing Authority of Los Angeles, 200 Cal. App. 4th 1267 (2011)

Ada Cordero-Sacks was terminated from her position as an attorney in the Los Angeles Housing Authority's Office of Internal Control following her investigation of alleged internal misconduct and fraud within the Authority. Cordero-Sacks's claim for retaliatory discharge under the California False Claims Act (the "FCA") was tried to a jury, which resulted in a verdict in her favor in the amount of $440,000. The Court of Appeal affirmed the judgment on the grounds that Cordero-Sacks was a proper plaintiff under the FCA even though she was not pursuing a *qui tam* action when she was subjected to retaliation. The Court further held that Cordero-Sacks had not wrongfully disclosed confidential attorney-client information in prosecuting this case or that there was insufficient evidence in the absence of such privileged information. The Court further held that the Authority was properly barred from offering evidence of Cordero-Sacks's alleged poor performance because the Authority had refused to produce such information during discovery based upon the attorney-client privilege. The Court also held that Cordero-Sacks's self-employment was a reasonable, good faith exercise of diligence in attempting to mitigate her damages. Finally, the Court affirmed the trial court's award of $415,000 in attorney's fees to Cordero-Sacks.

$160,000 Sexual Harassment Verdict And Attorney's Fee Award Of $677,000 Affirmed

Fuentes v. AutoZone, Inc., 200 Cal. App. 4th 1221 (2011)

Marcela Fuentes worked as a part-time customer service representative (cashier) for AutoZone. Fuentes alleged that two managers (Melvin Garcia and Gonzalo Carrillo) had spread rumors that Fuentes had sexually transmitted herpes; that she and a coworker were engaged in a sexual relationship; and that she could make more money working as a stripper. On one occasion, Garcia physically moved Fuentes to turn her around and display her buttocks to customers, while laughing and clapping and commenting that Garcia and Fuentes would be rich if they owned the store because all that Fuentes had to do was "just turn around and show them her butt." Fuentes asked for and received a transfer to another store before quitting two years later for unrelated reasons. Garcia and Carrillo were terminated. At trial, the jury awarded Fuentes $160,000, and the trial court awarded her $677,000 in attorney's fees. The Court of Appeal affirmed the judgment, finding substantial evidence to support the jury's verdict in favor of Fuentes.

Supervisors Cannot Be Held Individually Liable For Military Leave Discrimination/Retaliation

Haligowski v. Superior Court, 200 Cal. App. 4th 983 (2011)

While employed by Safway Services, Inc., Lieutenant Mario Pantuso was called to active duty with the United States Navy. When Pantuso returned from his six-month deployment in Iraq and asked for his job back, his immediate supervisor and the regional manager informed him that he was terminated from employment. Pantuso sued Safway and the two managers for discrimination and retaliation in violation of Cal. Military & Veterans Code § 394. The two managers demurred to the complaint on the ground that only an employer could be held liable under the statute. The trial court overruled their demurrers, but the Court of Appeal granted the managers' petition for writ of mandate, ordering the trial court to enter a new order sustaining the demurrers without leave to amend based on a similar interpretation of the California Fair Employment and Housing Act exempting supervisors from liability for discrimination and retaliation.

Teacher With Expired Teaching Certificate Was Not "Qualified" Within The Meaning Of The ADA

Johnson v. Board of Trustees, 2011 WL 6091313 (9th Cir. 2011)

Patricia Johnson, who had a history of depression and bipolar disorder, taught special education for a school district in Idaho for a decade. Before her teaching certificate expired in 2007, Johnson failed to take sufficient college courses to obtain a renewal of the certificate because she experienced a "major depressive episode." As a result, the school district terminated Johnson's employment. Johnson sued for discrimination under the Americans with Disabilities Act, claiming that her disability led to her inability to timely obtain the appropriate certification. The Ninth Circuit held that because Johnson was not a "qualified individual with a disability" under the ADA (because of her failure to obtain the certificate), the school district had no obligation to reasonably accommodate her alleged disability.

Injunction Against Workplace Violence May Be Supported By Hearsay Evidence

Kaiser Found. Hospitals v. Wilson, 201 Cal. App. 4th 550 (2011)

The trial court considered hearsay evidence in issuing injunctions under Cal. Code Civ. Proc. § 527.8, prohibiting Jeff Wilson (the husband of a terminated Kaiser employee) from committing acts of violence or making threats of violence against two Kaiser employees. The trial court considered hearsay evidence that Wilson had threatened to "put [the Kaiser employees] down" and that he had threatened to shoot one of them. The Court of Appeal affirmed, holding that it was not error for the trial court to consider hearsay in determining whether to issue an injunction under this statute.

Claims For Reporting Time Pay And Split Shifts Were Properly Dismissed

Aleman v. AirTouch Cellular, 2011 WL 6383963 (Cal. Ct. App. 2011)

Daniel Krofta and Mary Katz filed this putative class action against their employer, alleging reporting time pay violations and seeking additional compensation for working split shifts. Krofta sought reporting time pay for days he attended meetings at work even though he was furnished work (and was paid) for at least half of the scheduled work time. (All of the meetings in question were listed on Krofta's schedule, had certain start times, expected topics and durations and lasted at least half of the expected duration.) The trial court granted summary judgment to AirTouch because "when an employee is scheduled to work, the minimum two-hour pay requirement applies only if the employee is furnished work for less than half of the scheduled time." The trial court also dismissed Krofta's claim for split-shift compensation because every time Krofta worked a split shift (a work schedule interrupted by "non-paid, nonworking periods"), he was paid a total amount greater than the minimum wage for all hours worked plus one additional hour. The Court of Appeal affirmed summary judgment of Krofta's claims (on the grounds relied upon by the trial court) and of Katz's claims on the ground that she had entered into an enforceable settlement agreement and release. The appellate court reversed the award of $286,000 in attorney's fees to AirTouch because plaintiffs' claims were subject to Labor Code § 1194 (not section 218.5) and thus only a prevailing *plaintiff* could recover his or her fees.

Ministerial Exception Barred School Employee's Wrongful Termination Claims Against Church

Henry v. Red Hill Evangelical Lutheran Church, 201 Cal. App. 4th 1041 (2011)

Sara Henry taught preschool children at the Red Hill Evangelical Church of Tustin; she was also the director of the preschool. Henry, who is Catholic, was not required to be Lutheran (only a practicing Christian) and was aware of the "Christian-based, Bible-based values of the school." Henry was married when she was hired but later divorced and gave birth to a child fathered by her boyfriend. The church terminated Henry's employment because her "living arrangements were contrary to the religious beliefs of the church and school." Henry sued the church for marital status discrimination under the Fair Employment and Housing Act and for violation of the public policy embodied in that statute, Title VII and the state constitution. The trial court bifurcated the trial and, after hearing the church's defenses first, entered judgment in favor of the church because Henry was terminated for violating a church precept. The Court of Appeal affirmed, holding that the church is exempt from the FEHA and that the termination did not violate any public policy rooted in Title VII. The Court also held the ministerial exception doctrine barred Henry's claims.

Nonexclusive Insurance Agent Was An Independent Contractor

Arnold v. Mutual of Omaha Ins. Co., 2011 WL 6849652 (Cal. Ct. App. 2011)

Kimbly Arnold filed a complaint against Mutual of Omaha on her behalf and on behalf of a putative class of similarly situated "licensed agents" and "sales representatives" of the company, alleging violations of the California Labor Code, including provisions governing expense reimbursement of employees and timely payment of final wages to employees who have quit their employment. Mutual argued that Arnold was an independent contractor under the common law test, and the trial court agreed, granting Mutual's summary judgment motion. The Court of Appeal affirmed, holding that the common law test (not the test found in Labor Code § 2750) is to be used to determine if a worker is an independent contractor or an employee. The Court further held that the trial court properly applied the common law test in determining that Arnold was an independent contractor (e.g., Arnold used her own judgment in determining whom to solicit as well as the time, place and manner of the solicitation; her appointment was nonexclusive, and she in fact solicited for other insurance companies during her appointment with Mutual; her Mutual manager did not evaluate her performance or monitor or supervise her work; training was voluntary except as required by law; and agents who used Mutual's office were required to pay a fee for the workspace and telephone service).

Hirer Of Independent Contractor May Not Be Sued For Injuries Sustained By Worker

Gravelin v. Satterfield, 200 Cal. App. 4th 1209 (2011)

Gary Gravelin was injured while installing a satellite dish on the roof of a residence. Although Gravelin received workers' compensation benefits from his employer, he sued the homeowners. The trial court granted summary judgment to the homeowners on the ground that in the absence of an exception to the doctrine enunciated in *Privette v. Superior Court*, 5 Cal. 4th 689 (1993), Gravelin was limited to the remedy provided by workers' compensation. Gravelin argued that the "preexisting hazardous condition" exception applied, but the trial court disagreed. The Court of Appeal affirmed dismissal on summary judgment. *Cf. Castillo v. Toll Bros., Inc.*, 197 Cal. App. 4th 1172 (2011) (minimum wage – not the prevailing wage – is the standard for determining whether hirer of independent contractor is liable for violating Labor Code § 2810).

California Overtime Requirements Apply To Work Performed By Non-Resident Employees

Sullivan v. Oracle Corp., 2011 WL 6156942 (9th Cir. 2011)

Three Oracle instructors (all non-residents of California) filed this class action to recover allegedly unpaid overtime under California law for work they performed while in California. Two of the instructors were residents of Colorado and one was a resident of Arizona; all of them worked in their home states and, from time to time, in California. The district court granted Oracle's motion for summary judgment, but the Ninth Circuit reversed in part, holding that the California overtime requirements (which are stricter than the overtime requirements of Arizona and Colorado) apply to work performed in California by residents of other states. The Court of Appeals affirmed dismissal of the claim made by two of the plaintiffs who asserted a violation of California's Unfair Competition Law (Bus. & Prof. Code § 17200) for alleged violations of the federal Fair Labor Standards Act outside California on the ground that Section 17200 does not have extraterritorial application. (The Ninth Circuit cited and adopted the California Supreme Court's determination of these legal issues in *Sullivan v. Oracle Corp.*, 51 Cal. 4th 1191 (2011).)

Related Professionals

- **Mark Theodore**
  Partner
- **Anthony J. Oncidi**
  Partner
- **Harold M. Brody**