



**THE ZAPPIA LAW FIRM,** A PROFESSIONAL CORPORATION

— *Labor & Employment Law —  
Defending Employer's Rights*

# Labor and Employment Law Update

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- \$4.9 Million Award To Football Coach Who Was Terminated After Reporting Sexual Abuse and Hazing to School Administration
- Union Claims Wal-Mart Closed Five Stores To Punish Union Seeking Employees
- High Level AT&T Executive Accused Of Race Discrimination

## Sexual Harassment: These Allegations, If True, Will Be Worse Than A “Casting Couch”

A name partner of a Beverly Hills entertainment boutique firm has been accused by an actress he represented of forcing her to be his sex slave or risk having him ruin her career, according to a lawsuit filed in Los Angeles Superior court. The complaint alleges that the partner represented the actress for nearly 13 years, and that the actress had had an active career for the first four years. However, after taking a two-year hiatus to care for her father, the former managers of the actress were unwilling to work with her, and the only person still willing to help restart her career was her attorney. The complaint alleges that he suggested that she needed to take on roles with nudity and sexual acts, and that he offered to teach her how to exude more sexuality to promote her career.

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The complaint alleges that the attorney began sending her racy emails and text messages, which included statements of his desire to have sex with her as well as nude pictures of himself. The behavior then escalated and during a meeting in his office, the plaintiff claims, she was sexually assaulted. The complaint alleges that from late 2009 until December 2013, he compelled the plaintiff numerous times to have sex with him, including demands that she express pleasure during those acts. "If plaintiff would cry or not manifest pleasure during sexual relations, [he] would become sexually violent, often physically injuring the plaintiff," the complaint says. The complaint further alleges, "[he] forced plaintiff to accede to sexual acts that plaintiff found repulsive, humiliating, dehumanizing, painful and physically and mentally injurious." Plaintiff states she was fearful of him and felt that he had control over her ability to return to the acting profession and her entire future as an actress. Her complaint states that the course of abuse caused plaintiff increasing emotional and mental injury, ultimately to a point where she became totally disabled and unable to function. The complaint seeks damages for emotional distress, breach of fiduciary duty and sexual harassment.

*Hollywood Lawyer Made Client Virtual 'Sex Slave,' Suit Says*, Law360 (April 13, 2015), Vin Gurrieri.

## DISCRIMINATION

### Racial Discrimination By High-level Executive At AT&T

An African-American woman who worked at AT&T for more than 30 years filed a lawsuit against AT&T and its Board of Directors. The complaint alleges that AT&T's president of content and advertising sales had his former

executive assistant, who is also black, transfer an image of an African-American child with a racial slur, from his old work phone to his new one. The plaintiff claims that she was passed over for a job because of her race and age, and subjected to illegal harassment and retaliation when she complained. The complaint states that this high-ranking AT&T executive condones the use of the "N-word," that this attitude is consistent with the demeanor he portrays at the office, and is reflected in his discriminatory employment practices. The plaintiff claims she consistently received smaller raises than her less experienced colleagues who were not African-American and that she was passed over for the executive assistant opening because he gave the job to a younger, non-black, inexperienced woman he was having an affair with. The complaint alleges discrimination, harassment based on race, sex and age, and that she was retaliated against. She seeks more than \$100 million in damages.

*AT&T Faces \$100M Race-Bias Suit Over Exec's Text, Images*, Law360 (April 28, 2015), Margaret Harding.

### \$13 Million Jury Verdict For Gender And Equal Pay Discrimination

A federal jury awarded more than \$13 million in damages to a woman who sued her former employer for workplace discrimination, detailing an environment where she was harassed because of her gender and was paid less than the male whom she replaced. The jury verdict included \$12.5 million in punitive damages, \$400,000 in compensatory damages, \$170,000 in back pay and \$350,000 in front pay. Plaintiff, a 20-year veteran of the U.S. Air Force, said that starting from when she was hired, she was publicly humiliated on account of her gender,

with colleagues frequently being dismissive of her and regularly belittling her in front of others. She also said that when she was promoted after several months on the job to a supervisory position, she was paid less than her male predecessor in the role. She alleged that the previous shipping supervisor earned \$20 an hour, and that when she was promoted to the role, she was only paid \$16.50. She added that her predecessor had only held the role for six months, and that even after she had worked at the position for six years, she never reached his rate. She also claimed that the harassment she faced increased after her promotion, and that when she reported the treatment to her supervisors on multiple occasions, they ignored it. She said that although she had received a highly favorable performance evaluation, in which she was hailed for improving her relationships with superiors, she was fired four months later, allegedly because of her job performance and “management style.”

*Pa. Woman Lands \$13M Jury Award In Sex Discrimination Case*, Law360 (April 20, 2015), Dan Packel

## LABOR/UNION

### Thai Workers Allegedly Subjected to Discrimination that was “Highest on the Reprehensibility Scale”

The U.S. Equal Employment Opportunity Commission (EEOC) is seeking \$19.5 million in damages for 65 Thai workers who claim they were exploited while working at the Global Horizons farm in Washington. The EEOC seeks the maximum recovery of \$300,000 for each of the workers. The complaint alleges that Global Horizons and eight farms in Hawaii and Washington lured poor Thai workers to the U.S. with promises of high-paying jobs, but then subjected them

to serious abuses. The complaint alleges that supervisors confiscated the passports of the workers and segregated them from other laborers. The complaint also alleges that the workers were forced to live in overcrowded, run-down, rat and insect-infested housing with no beds. The complaint claims that the supervisors threatened and/or assaulted the workers while in the fields.

*EEOC Seeks \$19.5M Judgment In Worker Trafficking Suit*, Law360 (April 17, 2015), Matthew Bultman

### Union Claims Wal-Mart’s Closure Of Three Stores Is Part Of National Strategy To Punish Union Sympathizers

A group backed by the United Food and Commercial Workers International Union filed a request for injunction with the NLRB against Wal-Mart, claiming the retailer had suddenly closed five stores in retaliation for organizing activity at a southern California store. Wal-Mart claims that it ordered the temporary closure of the five stores to fix plumbing issues. The union, however, claims that the closures are a smokescreen for another blatant example of Wal-Mart’s unlawful retaliation against employees at the store who went on strike in 2012. The closures affect not only the 500 plus associates at the Pico Rivera store, but 1,700 more associates in the other four stores. Wal-Mart claims that each of the five stores has had more than 100 plumbing problems in the past two years.

*Union Seeks NLRB Injunction For Wal-Mart Store Closings*, Law360 (April 20, 2015), Y. Peter Kang

## NLRB

### Chipotle Ordered To Reinstate Employee Who Was Terminated For Participating In Union Activity

The National Labor Relations Board (NLRB) ruled that a Chipotle Mexican Grill restaurant unlawfully fired a worker because he participated in a campaign to raise minimum wage to \$15 per hour and discussed his pay with other employees. The Administrative Law Judge found that Chipotle illegally threatened and interrogated employees, barring them from discussing their wages and instructing managers to report any such conversations they overheard. The Judge found that the employee's participation in this type of activity, protected under the National Labor Relations Act, was the driving force behind his 2014 firing, not the fact he missed an all-store meeting, as store managers claimed.

The judge stated, "It cannot be said, with any degree of reliability, that [the employee] would have been discharged absent his union and other protected concerted activity." By all accounts, he was a good employee and one of the longest-serving workers at the restaurant when he participated with a fast food workers union in three Show Me 15 protests. But after returning from one of the protests, two store executives confronted him and told him that "he let the store down, let Chipotle down, and let his co-workers down," the order said. In May 2014, the same day a union representative came to the restaurant and warned the manager that federal law prohibited him from interfering with workers' union activity, the employee was fired, the order said. The manager justified the termination by saying the employee had recently overslept and missed an all-store meeting. But in her ruling, the Judge said that in general, workers at the restaurant weren't fired for missing such meetings. She

said it's not likely he would have been either, had it not been for the pay-related run-ins with management in the past. The Judge found that that the visit by [the union rep] was the proverbial 'straw that broke the camel's back' and a motivating factor in his discharge. The judge ordered Chipotle to give him his job back and repay him lost wages and benefits.

*NLRB Finds Chipotle Worker Illegally Fired For Pay Protests*, Law360 (April 3, 2015), Matthew Bultman

## OTHER

### Employee Must Proceed To Arbitration Because He Knowingly Waived His Right To Judicial Forum

The Ninth Circuit Court of Appeals held that an employee's Title VII claim must be arbitrated because, by signing a document acknowledging receipt of his employer's Policy Manual, he knowingly waived his right to judicial forum. Here, the employer's manual contained a detailed Dispute Resolution Policy explaining its arbitration policy. The policy stated it was governed by the Federal Arbitration Act (FAA) and covered all disputes, including Title VII claims under the Civil Rights Act of 1964. Under the FAA the party seeking to compel arbitration must show: (1) a valid, written agreement to arbitrate; and (2) the agreement encompasses the dispute at issue. The Court concluded that the agreement did contain a valid arbitration agreement covering the dispute and that the acknowledgment did expressly notify the employee that the Manual contained an arbitration provision.

*Ashbey v. Arch stone Property Management Inc.*, (May 13, 2015, Ninth Cir.) \_\_\_\_ F3d. \_\_\_\_.

## A Prevailing Defendant In A FEHA Case May Not Recoup Court Costs Unless The Plaintiff's Action Was Objectively Groundless

The California Supreme Court held that an unsuccessful plaintiff, who brought an action under the Fair Employment and Housing Act (FEHA), should not be ordered to pay the defendant's fees or costs unless the plaintiff brought or continued litigating the action without an objective basis for believing it had potential merit. In this action brought for employment discrimination under FEHA, the trial court granted summary judgment for the employer. The trial court, without making any finding that plaintiff's action was frivolous, unreasonable, or groundless, awarded the defendant costs totaling over \$5,000, and this award was affirmed by the Court of Appeal. This Court reversed, finding that the *Christianburg* standard, which delineates the test for finding an action objectively groundless, should be applied not only to defendant's attorney's fees but to the costs incurred as well.

*Williams v. Chino Valley Independent Fire Dist.* (2015) \_\_\_ Cal.4th \_\_\_.

## IN THE TRENCHES

### \$4.9 Million Judgment For Wrongful Termination and Retaliation

A Sacramento jury awarded Plaintiff \$900,000 for alleged unlawful retaliation, wrongful termination and defamation claims. The parties then entered into a \$4 million stipulated judgment in plaintiff's favor on all remaining causes of action, inclusive of his attorney's fees and costs. Plaintiff, the head football coach and physical education teacher, alleged that he was fired in retaliation for reporting sexual abuse and hazing that had occurred between members of the football team. He notified the

administration, which conducted an investigation, and terminated him, claiming he had ultimate responsibility over the football players during the time of the misconduct.

*Christopher Cerbone v. Roman Catholic Bishop of Sacramento, LA Daily Journal, Verdicts and Settlements* (April 17, 2015)  
Sacramento Superior Court 34-2013-00140297-CV-WT-GDS

### \$3.8 Million Wage and Hour Settlement Against PetSmart

PetSmart agreed to pay \$3.8 million to settle a collective action alleging that the retailer misclassified operations managers as exempt from Fair Labor Standards Act's overtime requirements. The lawsuit alleged that PetSmart willfully misclassified current and former operations managers as exempt and failed to pay them overtime. This comes on the heels of a \$10 million settlement that PetSmart paid to nearly 16,000 animal groomers a year ago for failure to compensate them for time spent performing non-grooming duties, such as stocking or cleaning.

*PetSmart Digs Up \$3.8M To End Worker OT Collective Action*, Law360 (April 29, 2015), Matthew Bultman.

### \$3 Million Wage and Hour Settlement Against Howmedica

Howmedica Osteonics Corp. agreed to pay \$3 million to settle claims they failed to reimburse a class of sales representatives for business expenses. The settlement will pay an average gross payment of \$22,000 to each of the 134 class members, and reimburses them for business expenses such as mileage, phone costs and supplies.

*Howmedica Pays \$3M To End Sales Rep. Reimbursement Suit*, Law360 (April 28, 2015), Aaron Vehling.

## \$2.8 Million Wage and Hour Settlement With Macy's and Home Delivery Link

Macy's and Home Delivery Link, Inc. (HDL) agreed to pay \$2.8 million to settle a putative class action with approximately 300 delivery drivers who alleged they had been misclassified as independent contractors. The drivers claimed that Macy's and HDL failed to pay them overtime wages as well as incidental expenses related to deliveries. Even though HDL allegedly required the drivers to sign agreements stating they were independent contractors, the plaintiffs claimed both HDL and Macy's exercised enough control over them to demonstrate that they were actually employees. Examples of this type of control included the drivers being required to use delivery helpers that HDL approved, being given delivery lists by HDL that they had no input over, and being required to adhere to rigid schedules or risk facing discipline. The appearance of the drivers was also regulated, including shaving requirements and the use of uniforms bearing the retailer's logo. Despite these controls, the plaintiffs alleged that they were forced to incur costs for items such as fuel, vehicle maintenance and payments to helpers passed onto them by HDL. Various other fees for items ranging from insurance to trash fees were also deducted directly from their pay. The drivers alleged they often worked beyond 40 hours per week but were only paid a flat rate without being properly compensated for overtime.

*Macy's, Truck Co. Reach \$2.8M Deal With Drivers,* Law360 (April 16, 2015), Vin Gurrieri.

## \$2 Million Wage and Hour Settlement Against Wells Fargo Insurance Services

Wells Fargo Insurance Services agreed to pay \$2 million to settle a putative class action alleging that it had failed to properly compensate account executives for overtime hours worked. The class had originally sought over \$13 million accusing Wells Fargo of failure to pay overtime and/or missed meal and rest periods. Wells Fargo, however, argued that the class was exempt from overtime, because they met the administrative exemption. Their duties required the exercise of discretion and independent judgment and were directly related to the management or general business operations of Wells Fargo.

*Wells Fargo Affiliate Pays \$2M To End Account Execs' OT Suit,* Law360 (April 28, 2015), Kevin Penton.

As always, please do not hesitate to contact any of our attorneys if you have any questions or comments.

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## **Defending Employer's Rights**

The Zappia Law Firm provides its public and private sector employer-clients experienced, responsive and aggressive representation and defense with their labor and employment law matters. The firm focuses on representing management in employment and labor related litigation, appeals, arbitrations and administrative hearings; police and public employee discipline, due process and civil rights matters; personnel investigations; and general advice and counsel on California and federal labor and employment. The firm's attorneys have extensive experience representing and advising their clients in labor and employment matters involving discrimination, harassment, retaliation, wrongful termination, union negotiations and issues; California Labor Code, Fair Labor Standards Act, wage/hour claims, Family Medical Leave Act, Americans with Disabilities Act, employee leave laws and employee discipline.

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