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$100 Million Gender Bias Class Action Filed Against Law Firm By Female Partner

Kerrie Campbell, a litigation partner working at Chadbourne & Parke LLP filed a $100 million proposed class action lawsuit on behalf of all female partners at the law firm, accusing the firm of systematically excluding female partners from positions of decision-making authority and underpaying them, even when they outperform their male counterparts. Campbell's lawsuit alleges that she was pushed out by the firm because she complained that, compared to male partners, Chadbourne's female partners earn lower base pay and receive smaller, if any, bonuses. Campbell alleges that she has originated no less than 40 new matters for over 20 clients she brought to the firm and generated over $5 million in total collections for the firm. Despite that fact, however, a male colleague who generated nearly $2.7 million less than Campbell received more compensation than she did.

Kerrie Campbell v. Chadbourne & Parke LLP, (U.S. District Court for the Southern District of New York) Case number: 1:16-cv-06832.

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RACE DISCRIMINATION

Equitable Tolling Applies to Revive Former State Employee's Racial Discrimination Action Under FEHA

The California Court of Appeal held that the one-year statute of limitations to bring a FEHA action will be tolled during the period the EEOC is investigating a complaint. In 2011 plaintiff filed a race discrimination complaint with the Equal Employment Opportunity Commission (EEOC). Then because of a work-sharing agreement between the EEOC and the California Department of Fair Employment and Housing (DFEH), the EEOC automatically lodged a copy of the complaint with the DFEH. The DFEH issued a Right-to-Sue notice and deferred the investigation to the EEOC and informed plaintiff that the one-year period for him to file a California Fair Employment and Housing Act (FEHA) action would be "tolled during the period that the EEOC was investigating his complaint." On September 30, 2013, the EEOC found "reasonable cause" to believe plaintiff's allegation and the EEOC issued its own Right-to-Sue notice. Plaintiff received the notice from the EEOC on March 21, 2014. He filed an action with the DFEH on July 8, 2014, but this was 17 days beyond the 90-day federal statute of limitations. Based on this, the trial court granted the Defendant's demurrer on statute of limitations grounds. The Court of Appeal, however, reversed the trial court, on the grounds that *Downs v. Dept. of Water & Power* provided for equitable tolling of the FEHA limitations period during the period of the EEOC's investigation. Here, while Plaintiff's failure to timely file within the 90-day federal limitations period, made him ineligible for the statutory tolling period, he was still nonetheless, entitled to equitable tolling under *Downs*. The court reversed the dismissal accordingly.

Mitchell v. California Department of Health, (July 27, 2016) California Court of Appeal, Second District, Case number: B265769.

AGE DISCRIMINATION / RETALIATION

Defense Verdict Against Age Discrimination and Retaliation Claims for California Yacht Club

Hector Gutierrez was the executive chef for the California Yacht Club for over 27 years when he was terminated in 2013. Claimant alleged that he setup to be terminated because he refused to terminate a disabled employee. He argued that the alleged issues with his performance were pretextual, and that he was harassed because of age. Respondents claimed that after member complaints, they tried to have claimant submit to a performance improvement plan, but that he refused stating the club would need to decide what to do with him. Accordingly, they terminated him for insubordination and failure to make improvements to his performance. Defendants contended that his termination had nothing to do with his age. At trial, claimant could not produce any evidence to support his age harassment claim, and his retaliation claim was not based on any actual protected activity.

Hector Gutierrez v. California Yacht Club, LA Daily Journal, Verdicts and Settlements (August 26, 2016), JAMS.

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NLRB

NLRB Finds Company's Non-Compete Clause and At-Will Rules Violate Federal Labor Law

The National Labor Relations Board (NLRB or Board) ruled that a non-compete policy imposed by steel industry supply company Minteq International Inc. and two provisions in the policy pertaining to at-will employment and interference with business relationships violated federal labor law. The Board found that Minteq violated the National Labor Relations Act (NLRA) by requiring new employees to sign a non-compete and confidentiality agreement (NCCA), as a condition of employment without giving a local chapter of the International Union of Operating Engineers the opportunity to bargain over it. Minteq and the union have been parties to a collective bargaining agreement (CBA) since 2011. A year after the CBA went into effect, the company had begun requiring new employees to sign the NCCA, which binds workers for at least 18 months after the end of their employment. The Board found that Minteq's unilateral implementation of the NCCA was unlawful, saying that the NCCA was a mandatory bargaining issue and that the union should have been told of the requirement. Upon further review of the CBA, the Board found that its interference and at-will provisions were also unlawful because the language was too broad and that employees could "reasonably construe the challenged rules to prohibit Section 7 activity." In regard to the rule prohibiting an employee from interfering in Minteq's business relationships, the Board found that employees could reasonably read the rule to prohibit lawful conduct such as asking customers to boycott products in support of a labor dispute with the company. The Board stated, "The ability of employees to communicate with customers about terms and conditions of employment for mutual aid or protection is a right protected by Section 7 of the Act." The Board further held that the rule clearly placed restrictions on employees' ability to communicate with the company's customers and "restricts employee efforts to improve terms and conditions of employment or otherwise improve their lot as employees through channels outside the immediate employee-employer relationship." Regarding the at-will employment rule, the labor board said it failed to pass muster because it could cause confusion with certain provisions in the CBA. The Board found that "The "at-will employee" rule purports to give all employees at-will status, contrary to the parties' agreement in the CBA." "We find that employees thus would reasonably doubt whether the CBA's 'just cause' provision remains in effect. Thus, the 'at-will' rule has a reasonable tendency to discourage employees from engaging in conduct that would be protected by the CBA's 'just cause' provision and by Section 7 of the act." As part of its order, the NLRB said Minteq has to rescind the entire NCCA because it was improperly implemented.

Minteq International Inc. et al. and International Union of Operating Engineers, (National Labor Relations Board), Case number: 13-CA-139974.

Employer May Not Enforce "Concerted Action Waiver" that Interferes with Employees Right to Act Together as Protected Under the National Labor Relations Act

The Ninth Circuit Court of Appeals held that an employer violates the National Labor Relations Act (NLRA) when it requires employees covered by the Act, as a condition of their employment, to sign an agreement that precludes them from filing joint, class, or collective claims addressing their wages,

hours, or other working conditions against the employer in any forum. Here, an Ernst &Young employee filed a class action against the company despite having signed, as a condition of his employment, a "concerted action waiver," which required employees to pursue any claim against the company exclusively through individual arbitration and in "separate proceedings." The Court held that Section 7 of the NLRA establishes the right of employees to act together, including the right to pursue work-related legal claims together. Section 8 further enhances these rights by making it "an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed under Section 7.

Morris v. Ernst & Young LLP, (U.S. Court of Appeals for the Ninth Circuit) Case number: 13-16599.

CIVIL RIGHTS

Reputational Harm, Including Loss of Private Employment as a Result of Unfavorable Publicity, is not Actionable Unless it is Accompanied by Some More Tangible Interest.

The Ninth Circuit Court of Appeals held that statements made by defendants – police officers, city officials, and the police union – to the effect that plaintiff, who filed an excessive force claim against city, was a drug abuser and acted aggressively toward the officers were not sufficiently adverse to support a claim of First Amendment retaliation. Mulligan alleged that Los Angeles police officers together with City of Los Angeles officials and the police officers' union retaliated against him for exercising his First Amendment rights. Mulligan was injured in an altercation with two police officers and subsequently filed an administrative claim against the City of Los Angeles. Mulligan alleged that the officers had acted with unlawful force. The police officers' union, allegedly with assistance from City officials, responded by accusing Mulligan of being a drug abuser and of having acted aggressively toward the officers. As a result of the publicity that this episode attracted, Mulligan lost his job. The Court held that the statements allegedly made by defendants against Mulligan were not sufficiently adverse to support a claim of First Amendment retaliation. The defendants did not make any decision or take any state action affecting Mulligan's rights, benefits, relationship or status with the state. Nor could Mulligan show the loss of a valuable governmental benefit or privilege. Accordingly, the Court concluded that although Mulligan's reputation was undoubtedly damaged by the increased media attention, which eventually resulted in the loss of his job, such reputational harm is not actionable unless it is accompanied by some more tangible interest.

*Mulligan v. Nichols, (*U.S. Court of Appeals for the Ninth Circuit*) 2016 S.O.S. 14-55278.*

OTHER

California Judge Rejects Uber's $100 Million Labor Deal with Drivers

In a stunning setback to Uber's efforts to put labor practice claims behind it, a California federal judge rejected a proposed $100 million class action settlement. The Court ruled that while the drivers, who allege they were shorted tips and work expenses, face steep litigation risks because of an arbitration provision that may be enforced by the Ninth Circuit, the deal favors Uber in more ways than it should. The judge found that the settlement as a whole as currently structured is not fair, adequate, and reasonable. The judge took issue that the deal doesn't clarify whether drivers should be classified as employees or independent contractors, and it

provides for the release of a claim under the state's Private Attorneys General Act for just $1 million, even though the plaintiffs' attorneys had argued earlier in the suit such a claim would be worth $1 billion. The Court stated, If a revised deal cannot be reached, it's very likely that the scope of the case could be reduced to about 8,000 drivers because of Uber's arbitration clause, which would force those who didn't opt out of it to bring their claims individually. Uber announced the proposed $84 million settlement in April, seeking to end the two class actions that were brought against it. The actions allege Uber misclassified drivers as independent contractors and denied them proper tips.

Consolidated cases: O'Connor et al. v. Uber Technologies Inc. et al., case number 3:13-cv -03826, and Hakan Yucesoy v. Uber Technologies Inc. et al., case number 3:15-cv -00262, in the U.S. District Court for the Northern District of California.

IN THE TRENCHES

$4.5 Million Wage-and-Hour Class Action Settlement Paid by Labor Ready

Plaintiff, Jeffrey Lee Allen, filed a representative action as an "aggrieved employee" under the California Labor Code Private Attorneys General Act against Labor Ready Southwest Inc. The class alleged that Labor Ready failed to properly pay minimum wage and overtime wages to temporary workers. The class also alleged defendants failed to provide workers with meal and/or rest periods and failed to reimburse workers for work-related expenses. Defendant denied the allegations and settled the class action for $4.5 million.

Jeffrey Lee Allen v. Labor Ready Southwest Inc., LA Daily Journal, Verdicts and (August 12, 2016), US District Court Central, Case number: 2:09-cv-04266-DDP-AGR.

$2.68 Million Wage-and-Hour Class Action Settlement Paid by Pacer Cartage

Plaintiff Mendoza brought a class action on behalf of herself and all others similarly situated against her employer Pacer Cartage, a trucking company. The class alleged that the company misclassified the drivers as independent contractors. The class alleged that the misclassification resulted in the company's failure to properly provide meal and rest periods. Finally, the class sought to recover the unpaid overtime wages for the truckers based on the failure to properly provide or pay for meal and rest periods resulted. Defendant Pacer denied the allegations, asserted various affirmative defenses, and agreed to settle the matter for $2,687,500.

Mendoza v. Pacer Cartage, Inc., LA Daily Journal, Verdicts and Settlements (August 12, 2016) United States District Court for the Southern District, Case number: 3:13-cv-02344-LAB-JMA.

$2.35 Million Wage-and-Hour Class Action Settlement Paid by Quest Diagnostics

A class of phlebotomists settled their wage and hour class action lawsuit with Quest Diagnostics for $2.35 million. The class alleged defendants failed to pay overtime wages and minimum wages, failed to provide meal periods and rest breaks, failed to pay all wages owed upon termination, failed to provide accurate wages statements, and failed to play business related expenses. Defendants denied all allegations, asserted various affirmative defenses, and settled with the class for $2.35 million.

Dorothea Emmons, et al. v. Quest Diagnostics, LA Daily Journal, Verdicts and Settlements (August 26, 2016), (USDC eastern) Case number: 1:13-cv-00474-DAD-BAM.

$850,000 Wage-and-Hour Class Action Settlement Paid by Starwood Hotels

A class of bellhops and housekeepers brought a wage-and-hour class action against Starwood Hotels and Resorts alleging that the W Hollywood Hotel shortchanged their wages. The class of 440 workers alleged that the hotel failed to properly pay overtime, and failed to provide meal and rest breaks. They also alleged that the hotel failed to reimburse workers for business expenses, and claimed that gratuities and service charges were improperly distributed. According to the complaint, the defendants required employees to work periods of more than four hours without a rest break and more than five hours without a meal break. The complaint also alleged that the hotel managers required those employees to work more than eight hours a day or more than 40 hours a week without furnishing time-and-a-half overtime pay. The complaint alleged that during rest and meal breaks, the workers were required to carry radios so they could be reached and respond to any customer or management questions or requests. Then, if called, an employee had to immediately end a break and return to work. The employees were also required to change into their uniforms before clocking in and clock out before changing at the end of the day. The class includes all current and former hourly, nonexempt employees of Starwood at the W Hotel in Hollywood who worked from February 14, 2010, through the date of the settlement's approval. Each member of the class should receive a net benefit of about $1,090.

The consolidated cases: *Joseph Sylvester et al. v. Starwood Hotels and Resorts Management Company et al.*, Case number BC536399, *Earl Minor v. Starwood Hotels and Resorts Management Company et al.*, Case number BC536890, and *Edna Martinez v. Starwood Hotels & Resorts Worldwide Inc. et al.*, Case number BC537737, in the Superior Court of the State of California, County of Los Angeles.

Defense Judgment for LA Unified School District Against Charges of Retaliation and Discrimination Based on Race and National Origin

A Los Angeles Superior Court judge granted the summary judgment motion of the LA Unified School District (LAUSD) against a former teacher's claims of retaliation and discrimination based on race and national origin. Plaintiff, Diane Hampton, a former teacher, was dismissed by the LAUSD. After the Commission on Professional Competence affirmed her dismissal, plaintiff sued LAUSD for race and national origin discrimination. The school district claimed that plaintiff was terminated due to inappropriate conduct with students, parents and staff. The school district also claimed that plaintiff did not raise any issue regarding race or national origin discrimination until after the Commission on Professional Competence affirmed the dismissal.

Diane Hampton v. Los Angeles Unified School District, LA Daily Journal, Verdicts and Settlements (July 22, 2016) Los Angeles County Superior Court, Case number: BC566103.

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

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