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

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In This Issue

Wal-Mart Must Pay Former Female Pharmacist $31 Million For Gender Bias

The pharmacist, who had worked at the same Wal-Mart location since 1994, filed a report with the Board of Pharmacy when she noticed that high turnover, understaffing and inexperienced staff posed a serious threat to the privacy and safety of patients. She also reported the staffing issues to management. In 2012 an inexperience pharmacy manager, who had replaced a more veteran predecessor, tried to blame a major dispensing error on her, and although she was exonerated, she claimed to be under intense stress from the accusation. While on a two-week medical leave, a coworker accessed her medical record and shared her anxiety diagnosis with other coworkers around the store. Finally, when she lost a key to the pharmacy, even though she promptly reported it lost, she was immediately terminated. She alleged that the lost key was the pretext for firing her for reporting the improper procedures. She provided evidence at trial that the quick termination went against the company's practice of providing warnings and a special day devoted to job improvement. She also alleged that no male colleague had ever been fired for simply losing a key.

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DISCRIMINATION

Age Discrimination

$37 Million Settlement of Wrongful Termination Class Action

Plaintiffs, who consisted of 130 former employees of Lawrence Livermore National Laboratory, filed a consolidated action against the national security lab. Plaintiffs had been laid off in May 2008, only months after the lab was privatized by defendant Lawrence Livermore National Security, LLC. All plaintiffs had claims for age discrimination and breach of contract, along with other individual claims, including retaliation and disability discrimination. Plaintiffs contended that the layoffs resulted from a corporate takeover of the Lab. Plaintiff argued that while the new contract to manage the lab was an additional $40 million more than the not-for-profit UC had charged, the new owner added approximately 40 new employees in executive and management positions, which significantly increased overhead costs. At the same time, Lawrence Livermore National Security promised the federal government it would save $50 million annually by improving operations and efficiency. Plaintiffs alleged that to accomplish this, new ownership targeted its oldest and most experienced employees for layoff, in violation of its own policy, which required the majority of employees to be laid off in inverse order of seniority. The average age of the Plaintiffs that were laid off was 54 with nearly 20 years of experience. The case settled when Lawrence Livermore National Security agreed to pay $37,245,344 to the plaintiffs.

Elaine Andrews, et al. v. Lawrence Livermore National Security, LLC

Injury-Related Discrimination

Summary Judgment Improper Where Employee Timely and Sufficiently Alleged Cause of Action For Common Law Wrongful Discharge in Violation of Public Policy and as a Result of Work-Related Injury Discrimination

The California Court of Appeal held that a common law tort cause of action exists for at-will employees against employers who discharge them in violation of fundamental public policy, in this case FEHA's public policy against discrimination based on a disability. Prue filed a complaint against his employer after he was terminated shortly after sustaining a work-related injury. The employer argued that Prue's complaint was barred by the exclusivity doctrine of workers' compensation under the Labor Code and/or was time barred by the one-year statute of limitations, and the trial court granted the motion. The Court of Appeal, however, reversed the decision finding (1) there is a two-year statute of limitations on this type of common law tort action; and (2) that Prue's complaint sufficiently alleged the common law tort because he repeatedly mentioned FEHA and specifically alleged a cause of action for wrongful termination in violation of public policy, which accordingly gave the employer adequate notice that he was relying on FEHA's public policies. Thus, the workers' compensation exclusivity doctrine was not the exclusive remedy for work-related injury discrimination.

Prue v. Brady Co. (2015) ___ Cal.App.4th ___.

LABOR LAW

Union's Petition To Compel Arbitration Not Barred By Statute Of Limitations and Hospital's Five-Month Delay In Responding To Request Was a Violation of Good Faith.

The Ninth Circuit Court of Appeal held that the statute of limitations had not run and did not bar SEIU's motion to compel arbitration, and that Los Robles' five month delay in responding to SEIU's written request to arbitrate constituted a violation of good faith. Here, after following the three-step grievance process, SEIU sought to have the matter arbitrated. After the hospital stated the matter was neither grievable nor arbitrable, the union sent a formal written request to arbitrate. When the hospital did not respond for five months, the union filed a petition to compel arbitration. The hospital filed a motion for summary judgment arguing that the six-month statute of limitations had run, and the court agreed. The Ninth Circuit, however, reversed and remanded the ruling finding: (1) only an unequivocal, express rejection of the union's request will start the limitations period; and (2) the hospital's five-month delay in responding to SEIU's formal request was a violation of good faith. The Ninth Circuit found that the hospital's email declaring it would not arbitrate the matter could not be the unequivocal and express rejection required under the circumstances, because the email was sent prior to SEIU's formal written request to arbitrate.

SEIU v. Los Robles Regional Med. Ctr. (2015, Ninth Cir.) ____ F3d. ____.

County Need Not Meet and Confer Over Creation of New (Non-Union) Positions, But Must Meet and Confer Before It Can Delete Union Positions

The California Court of Appeal held that Defendant El Dorado County violated its own rules when it failed to give notice and consult with the bargaining unit before it deleted 11 law enforcement bargaining unit positions. The court ruled that the deletion of the unit positions must be invalidated so that the county can comply with its own rules, that is, consult with the union to bargain over the effects of the change. In 2011 El Dorado County created a new classification, Sheriff's security officer, and placed the new classification in a general bargaining unit rather than the law enforcement unit, because the security officers would not have peace officer authority. At the same time the County deleted a number of positions from the law enforcement bargaining unit. The union, El Dorado County Sheriff's Association, demanded to bargain over both the decision to create the new classification, and the decision to delete the 11 positions. The trial court ruled and the court of appeal agreed that the county did not have a duty to bargain over the creation of the new positions, because the work assigned to the new Sheriff's security officers did not belong to the bargaining unit. The court of appeal, however, reversed the trial court and held that the County was required to meet and confer of the deletion of the positions in the law enforcement bargaining unit.

El Dorado Deputy Association v. County of El Dorado, (2016)____ Cal.App.4th ____.

NLRB

Wal-Mart Ordered to Reinstate 16 Workers Terminated For Participating in Strikes

A National Labor Relations Board judge ordered Wal-Mart to allow 16 workers to return to their jobs after they participated in strikes at the retailer's headquarters during a shareholders meeting. The judge found that the employees' participation in the "Ride for Respect" protests over alleged retaliation for complaining about working conditions was protected activity under the National Labor Relations Act (NLRA). Wal-Mart argued that it was allowed to fire the workers involved in the "Ride for Respect" strikes because the strikes were intermittent work stoppages not protected by the NLRA. The judge, however, ruled that the strikes weren't brief strikes or scheduled close to a group of other strikes, and could not be viewed as intermittent, and were thus protected by the NLRA.

Wal-Mart Workers' Strikes Were Lawful, NLRB Judge Says, Law360 (January 22, 2016) by Kurt Orzeck.

POLICE

An Agency May Postpone Disclosure of the "Nature of the Investigation" Until the Scheduled Time of the Interview

The California Court of Appeal ruled that an agency may postpone disclosure of the nature of the investigation until the scheduled time of the interview. The Police Officer Bill of Rights requires that a public safety officer, who is under investigation which could lead to punitive action, shall be informed of the nature of the investigation prior to any interrogation. The court carved out an exception, allowing the agency to postpone disclosure until the scheduled time of the interview where the agency has reason to believe that earlier disclosure would jeopardize the safety of an interested party or the integrity of the evidence under the officer's control. When an agency chooses to postpone disclosure like this, the agency must briefly postpone the interview long enough for the officer to "meaningfully consult" with any representative he or she chooses to have present during the interview. Here, the undisputed facts indicate that the officer did have sufficient time for meaningful consultation with his representative; therefore, the court of appeal affirmed the trial court's dismissal due to insubordination for refusing to submit to an interrogation.

Ellins v. City of Sierra Madre, 2016 ___ Cal.App.4th ___

Department Must Complete the Administrative Appeal Process Even When an Officer Retires Prior to the Completion of the Hearing

The California Court of Appeal held that an officer's administrative appeal hearing re disciplinary action must be heard and completed even though the officer retired after the appeal process had been started but before the hearing/process could be completed. Here, the officer initiated the administrative appeal process but was unable to attend the scheduled hearing after he suffered a heart attack. The officer later retired for medical reasons prior to the hearing being rescheduled. The civil service commission had ruled that it no longer had jurisdiction over the matter and argued that he was no longer an employee entitled to an administrative appeal. The court of appeal, however, disagreed and remanded to the trial court to require the civil service commission to complete the appeal process.

Hughes v. County of San Bernardino, (2016) ___ Cal.App.4th ___.

IN THE TRENCHES

$8.2 Million Gender Discrimination Class Action Settlement

Plaintiff, on behalf of herself and others similarly situated, brought a class action against their former employer, Daiichi Sankyo, a pharmaceutical manufacturer and seller. Plaintiffs alleged that Daiichi systematically paid female sales employees less than similarly situated male employees, denied them access to leadership positions, and engaged in pregnancy discrimination. When the parties settled, Daiichi agreed to pay eligible class members $8.2 million, and also agreed to retain an independent consultant to review applicable employment policies and practices.

Sara Wellens, et al. v. Daiichi Sankyo Inc., LA Daily Journal, Verdicts and Settlements, U.S. District Court for the Northern District of California, Case Number: 3:13-cv-00581-WHO.

$5 Million Wage-and-Hour Class Action Settlement

Plaintiff Bergstrom brought a class action complaint on behalf of herself and other similarly situated non-exempt employees against her former employer, Circle K, alleging claims for denial of meal and rest breaks and other Labor Code violations. The class alleged defendant failed to provide meal and rest breaks, pay vacation wages, keep adequate records, and timely pay all wages due at end of employment. Circle K denied any violations and agreed to settle with the class for $5 million.

Bergstrom v. Circle K Stores Inc., LA Daily Journal, Verdicts and Settlements (January 22, 2016) Riverside County Superior Court, Case Number: RIC 1206463.

$3.5 Million Wage-and-Hour Class Action Settlement

Plaintiff's filed a class action against Cytec for violations of California Labor Code, California Unfair Competition Law, and Business and Professions Code section 17200. The class argued that Defendant company failed to pay workers all wages owed, including overtime wages, meal and rest periods and other wages owed. The parties settled the matter for $3.5 Million.

Mataiumu et al. *v. Cytec Engineered Materials Inc.,* LA Daily Journal, Verdicts and Settlements (January 8, 2016) U.S. District Court for the Central District of California, Case Number: 8:14-cv-01548-DOC-RNB.

$1.8 Million Wage-and-Hour Class Action Settlement

Class representatives brought a class action on behalf of all hourly non-exempt retail store employees in California for alleged violations of the California Labor Code. The class includes approximately 22,000 members of current and former employees. The class alleged defendant's rest break policy was unlawful as written, because it restricted rest breaks to a set schedule. The class further alleged that the security checks that defendant conducted resulted in off-the-clock work and shortened meal periods. Finally, the class further alleged defendant failed to pay minimum wage and overtime compensation and failed to maintain and provide required records and itemized wage statements. Defendant contended that rest break policy complied with the law, that the bag check was random and not mandatory, and that employees received proper meal periods despite the random bag checks. The parties settled for $1.8 million.

Rodriguez et al. v. Burlington Coat Factory Warehouse Corporation, LA Daily Journal, Verdicts and Settlements (January 15, 2016) U.S. District Court for the Central District of California, Case Number: 2:13-cv-02426-DDP-RZ.

$1.75 Million Wage-and-Hour Class Action Settlement

Kraft Foods Group settled a class action with 1,239 former and current employees for $1.75 million. The class alleged that Kraft did not provide its hourly-paid workers with duty-free meal and rest breaks. Specifically, the class alleged that Kraft failed to pay hourly production employees wages for missed 30-minute, duty-free meal breaks before the end of their fifth hour of their shift. The class also alleged that the company failed to pay class members one additional hour of pay for each duty-free meal and rest period not provided. The class further alleged failure to pay all wages owed in a timely way when employees left the company, and failure to provide accurate itemized wage statements and maintain pay records.

Kraft Agrees To $1.75M Deal To End Unpaid Wages Row, Law360 (January 4, 2016) by Daniel Langhorne.

$1.5 Million Wage-and-Hour Class Action Settlement

Plaintiff, on behalf of herself and all others similarly situated, filed a wage and hour class action against her former employer, Il Fornaio America Corporation. The class alleged their employer failed to provide required breaks and failed to pay them all wages owed. The class also asserted causes of action for failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay wages, failure to provide accurate itemized employee wage statements, failure to pay overtime wages, failure to indemnify necessary employee expenditures, unlawful deductions and violations of Unfair Competition Law. The parties ultimately reached a $1.5 million settlement, which will involve payment to a class of more than 6,000 current and former employees.

Wendy L. Williams v. Il Fornaio America Corporation, LA Daily Journal, Verdicts and Settlements, Sacramento County Superior Court, Case Number: 34-2011-00096116.

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

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We are also available to present on various topics, including:

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