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Defending Employer's Rights

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In This Issue

$13.5 Million Wage-and-Hour Class Action Settlement for CA Truck Drivers

Exel Direct Inc., a trucking company, settled a wage-and-hour class action lawsuit with 386 truck drivers for $13.5 million. The class alleged that Exel denied its delivery drivers rest breaks and failed to properly pay them flat, overtime and minimum wages. The class also alleged Exel engaged in a wrongful pattern of classifying drivers as independent contractors instead of employees, failed to reimburse drivers for business expenses, improperly deducted wages, required drivers to pay for pre-employment medical examinations, forced workers to buy things of value from Exel, failed to provide accurate wage statements, and failed to properly compensate drivers after they quit or were fired. The certified class includes all individuals who signed Exel's independent contractor agreement and personally provided delivery services in California for at least one day between June 4, 2008, and Jan. 6, 2015.

Villalpando v. Exel Direct Inc. et al., (U.S. District Court for the Northern District of California) Case number 3:12-cv-04137.

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DISCRIMINATION / GENDER BIAS

Qualcomm Will Pay $19.5 Million to Settle a Gender Discrimination Class Action Lawsuit Before It Is Even Filed

Qualcomm agreed to pay $19.5 million and change policies to pay and promote women on the same scale as men to end a proposed gender discrimination class action before it even began. Qualcomm Technologies Inc. will pay a class of about 3,300 current and former female employees and change its corporate practices, including adding a compliance officer and conducting a regular statistical analysis of its pay practices to keep its pay and promotion equal among similarly situated men and women. A group of seven current and former employees at Qualcomm in science, technology, engineering and math -related roles accused the company of systemic gender discrimination stemming from its promotion policies. For example, Qualcomm didn't post positions that were open for employees seeking promotion, instead hinging career advancement on managers, many of whom are men, according to the suit. The effects of the sponsorship model meant that more men were chosen and groomed for promotions. Additionally, women who were caring for children had it even tougher, Qualcomm's policy discouraged taking leave and rewarded workers who stayed late at the office regardless of productivity.

Dandan Pan et al. v. Qualcomm Inc. et al., (U.S. District Court for the Southern District of California), Case number 3:16-cv-01885.

RELIGIOUS DISCRIMINATION / RETALIATION

Defense Verdict for Metropolitan Water District Against Claims of Religious Discrimination and Retaliation

Plaintiff Nutt filed a lawsuit against his employer, Metropolitan Water District (MWD), for religious discrimination and retaliation. He claimed that MWD terminated him in retaliation for an internal complaint of religious discrimination that he filed with the Equal Employment Opportunity Commission (EEOC) two years prior to his termination. Defendant MWD, however, argued that it had a culture of inclusion and did not tolerate religious discrimination. In fact, MWD allowed Bible study during lunchtime and allowed a prayer before meetings of its Board. Defendant contended that it terminated plaintiff because he argued with his supervisor and co-workers, lied about a counselor recommending his transfer, failed to show up for a mandatory training, told his supervisor to communicate with him only by email, and was insubordinate on many occasions. Prior to terminating Plaintiff, Defendant tried to help him, provided him with counseling, training opportunities, and suggestions for improvement. Finally, Defendant went through its progressive discipline process and gave Plaintiff an oral warning, a written warning, a three-day suspension, and a two-week suspension before ultimately terminating him.

Nutt v. Metropolitan Water District of Southern California, LA Daily Journal, Verdicts and Settlements (July 8, 2016) Los Angeles Superior Court, Case number: BC550863.

SEXUAL HARASSMENT

Z Foods Ordered to Pay $1.8 Million in Sex Harassment Case Brought by The EEOC On Behalf of Female Farmworkers

A California District Court ordered Z Foods Inc. to pay $1.47 million in damages in a sexual harassment and retaliation suit filed by the U.S. Equal Employment Opportunity Commission (EEOC) on behalf of the company's farmworkers. The workers accused two Z Foods male supervisors of sexually harassing female employees and

firing male and female workers after they complained. The Court found that "defendant and predecessor employer Zoria Farms did not have or did not enforce an anti-discrimination policy, failed to take action in response to numerous complaints, and permitted and ratified multiple violations of Title VII prohibitions on harassment and retaliation." The court found that the workers suffered severe emotional distress as a result of the actions of the two Z Foods supervisors, who subjected numerous female farmworkers to ongoing sexual harassment, which included promising promotions or continued employment in exchange for sexual favors, stalking, unwanted physical touching and leering. According to the EEOC, male employees who witnessed the harassment and later lodged complaints with the company on behalf of the female workers were retaliated against and fired soon after raising their concerns. The company was ordered to pay nine employees punitive damages of $200,000 each, the maximum amount allowed under Title VII of the Civil Rights Act of 1964 for companies of a certain size.

U.S. Equal Employment Opportunity Commission v. Zoria Farms, Inc. et al., (U.S. District Court for the Eastern District of California), Case number 1:13-cv-01544.

NLRB

Wal-Mart Can Keep Unions from Protesting Inside Its Stores

The California Court of Appeal held that Wal-Mart can bar unions from protesting inside its stores and found that Wal-Mart's trespassing claim against the unions is not preempted by the National Labor Relations Act (NLRA). Wal-Mart was granted an injunction barring unions from demonstrating inside its stores in California. The Court said the protesters' conduct, which included marching silently through Wal-Mart stores, singing and dispensing fliers, is not protected by the NLRA, and although the activity might in fact be prohibited by the act, that's not enough to override the local interest in preventing trespassing. The Court emphasized "Wal-Mart did not ask to keep the unions from demonstrating, irrespective of location, it only sought to keep the unions from demonstrating inside Wal-Mart stores." Wal-Mart filed suit accusing the unions of disruptive labor activities despite its cease-and-desist demands. Wal-Mart said that it hasn't been enough to rely on local police, because they arrive too late to stop the union members' alleged damage to its stores. The trial court had issued a preliminary injunction finding that Wal-Mart's limited invitation to the public to shop in its stores did not make those stores a public forum, and that the unions had unlawfully trespassed. The trial court found that the trespassing had substantially or irreparably harmed Wal-Mart, and issued the injunction barring unions from sending people into Wal-Mart stores to engage in unlawful activities, according to court records.

Wal-Mart Stores Inc. et al. v. United Food and Commercial Workers Union et al., (Court of Appeal of the State of California, Second Appellate District), Case number: B259926.

NLRB Loosens Standard for Unionizing Temporary Workers

The National Labor Relations Board (NLRB or Board) overturned the standard that a main employer (the "user employer") and a staffing agency must consent before an election covering temp workers and regular employees can take place, holding that employer consent isn't required. The Board held that proposed bargaining units that combine solely and jointly employed workers of a single-user employer must share a community of interest in order for a single

unit combining the two to be appropriate. The Board will apply the traditional community of interest factors for determining the appropriateness of such a unit, according to the ruling. "The user employer will be required to bargain regarding all terms and conditions of employment for unit employees it solely employs," the NLRB said in a statement announcing the ruling. "However, the user employer will only be obligated to bargain over the jointly-employed workers' terms and conditions which it possesses the authority to control." The Board held that a combined bargaining unit of people who work only for a user employer and people who are jointly employed by that user employer and a staffing agency falls within the bounds of the NLRA. The Board held that employer consent is not necessary for units that combine jointly employed and solely employed employees of a single user employer.

Miller & Anderson, Inc. and Tradesmen International and Sheet Metal Workers International Association, Local Union No. 19, AFL–CIO, (National Labor Relations Board) Case number 05–RC–079249.

NLRB Judge Finds Indian Casino's Handbook Illegally Restrictive

A National Labor Relations Board judge ruled that Casino Pauma Valley maintained illegal employee handbook rules related to solicitation and social media use, thus violating a National Labor Relations Act (NLRA) rule that gives employees the right to unionize. The judge ordered Casino Pauma to stop engaging in unfair labor practices and to affirmatively put the NLRA into practice by revising the unlawful handbook rules. The judge found that the handbook rules could reasonably be read by employees to restrict the free exercise of their Section 7 right to comment to fellow employees and others, including union representatives, about their work-related complaints concerning wages, hours and working conditions. The judge specified four categories of violations by the casino in its employee handbook. The first involved the handbook's guidelines on conducting personal business, which the judge said is unlawful because it bans employees from all of the casino's property except when conducting the casino's business. This rule unlawfully restricts off-duty employees from engaging in protected activity; and it prohibits protected activity during nonworking time. The second rule, regarding solicitation and distribution, is unlawful because it prohibits protected solicitation and distribution "if the intended recipient expresses any discomfort or unreceptiveness whatsoever." The third rule was found to be unlawful because it prohibits employees from communicating anything to do with work on social media without an employer-approved disclaimer. The fourth rule, regarding conflicts of interest, is unlawful because it requires the casino's advance approval before employees may solicit co-workers.

Casino Pauma and Unite Here International Union, (National Labor Relations Board), Case number 21-CA-161832.

POLICE

Court of Appeal Holds Dashboard Camera Video Footage Is Not Part of a Peace Officer's Personnel File for Purposes of Pitchess Motions

The California Court of Appeal held that a video of an arrest captured by a patrol car's dashboard camera is not a confidential "personnel record", and thus, a Pitchess motion was not required for its disclosure. Eureka police officers arrested a minor. The arrest was recorded by one of the officers' in-car video equipment. The arresting officer was initially charged with a misdemeanor but after experts hired by the prosecution and defense reviewed the evidence, including the video, the charges were dropped. A local reporter made several requests for a copy of the video under the California Public Records

Act Request. The City opposed the request claiming the dashboard camera video is a "personnel record" which served as the backbone of an internal affairs investigation, and is therefore protected, personnel information. The Court disagreed and stated, "That officers involved in an incident might face an internal affairs investigation or discipline at some unspecified point in the future does not transmute arrest videos into disciplinary documentation or confidential personnel information." The arrest video "was generated independently and in advance of the administrative investigation" and thus, was not a confidential personnel record under the Penal Code.

City of Eureka v. Superior Court, (July 19, 2016), ___ Cal.App.4th ___.

IN THE TRENCHES

$6 Million Wage-and-Hour Class Action Settlement Paid to Pizza Hut Drivers

A California judge approved Pizza Hut's deal to pay $6 million to resolve claims that it shorted workers on their wages by not compensating them for missed breaks and failed to properly reimburse delivery drivers for vehicle expenses. The class alleged that Pizza Hut failed to provide required meal and rest periods, failed to pay overtime and minimum wages and failed to maintain required records. The suit also alleged that Pizza Hut's delivery driver reimbursement policy shorted its employees. Under Pizza Hut's reimbursement policy, California drivers were paid a set amount per order delivered, regardless of the distance driven, according to the drivers. The settling class includes roughly 18,700 employees who worked for Pizza Hut between June 6, 2006, and Dec. 13, 2010.

Behaein v. Pizza Hut Inc., Los Angeles Superior Court, Case number BC384563.

$3.5 Million Jury Verdict for Four Officers Against the Sacramento County Sheriff's Department.

Plaintiffs Annica Hagadorn, Tracie Keillor, Jodi Mendonca and Dawn Douglas, all worked as officers of the Sacramento Sheriff's Department. They filed a lawsuit against the department alleging retaliation for complaining about race and gender discrimination and sexual favoritism. Plaintiffs alleged multiple forms of retaliation, including unwarranted discipline, investigations, removal from job positions, and denial of pay. Additionally, Sgt. Keillor alleged that she suffered a stroke because of the stress from being the subject of two Internal Affairs investigations. The jury found in favor of all four plaintiffs on their retaliation claims. Most notably, the jury found that the stress of two investigations caused Sgt. Keillor's stroke and awarded her nearly $3.25 million of the total award.

Hagadorn, et al. v. Sacramento County Sheriff's Department, LA Daily Journal, Verdicts and Settlements (July 1, 2016) Sacramento County Superior Court.

$1.1 Million Wage-and-Hour Class Action Settlement Paid to Offshore Workers by Sodexo

Sodexo Inc., a food service and facilities management company, has agreed to pay $1.1 million to settle a class action lawsuit, which accused it of failing to pay 250 employees for nonworking hours while they were stationed on offshore oil platforms. The workers contend that Sodexo had to pay employees for all hours on the platforms, regardless of whether they were working, sleeping or recreating, and that Sodexo had a policy not to pay workers for all hours they spent at the platforms.

Reginald Savannah et al. v. Sodexo Inc. et al., (U.S. District Court for the Northern District of California), Case number 3:15-cv-05845.

Defense Verdict for County of Los Angeles Against Allegations of Race, Gender and Pregnancy Discrimination

Plaintiff had settled a previous lawsuit with the County of Los Angeles alleging that she had been denied promotions because she was African-American. After the settlement she transferred to a new department. In this department she again applied for promotions, which she did not receive. Plaintiff filed this lawsuit claiming that her failure to receive a promotion was retaliation for having filed the earlier lawsuit. Plaintiff alleged that she was better qualified than the candidates who had been appointed to the positions that she sought. Plaintiff further alleged that the Chief Information Officer, who knew about her prior lawsuit, retaliated against her by denying her a promotion. The court granted the county's motion for summary adjudication dismissing plaintiff's claims for race, gender and pregnancy discrimination and hostile work environment.

Shawnda Stewart v. County of Los Angeles, LA Daily Journal, Verdicts and Settlements (July 15, 2016) Los Angeles Superior Court, Case number: BC579814.

$704,000 Jury Verdict for Age Discrimination / Wrongful Termination

George Corley, a 58-year old Division Chief for the San Bernardino Fire Protection District, sued the District following his termination. Corley claimed that he was discriminated against because of his age. He alleged that he had never had a negative performance evaluation in his 38-year career, and that he was replaced by someone 10 years younger with less experience to save costs. Defendants contended that Corley was terminated because he mismanaged his budget and failed to show up at a fire. The jury disagreed with the district and awarded Corley $704,000.

George Corley v. San Bernardino County Fire Protection District, LA Daily Journal, Verdicts and Settlements (July 15, 2016) San Bernardino Superior Court, Case number: CIVDS1206008.

$340,000 Class Action Settlement Paid to Uber *Riders*

Uber settled a class action lawsuit brought by riders who accused the company of unlawfully taking a cut of a 20 percent driver gratuity charge. The class claimed that they used the company's mobile app to hire a driver and were charged the mandatory 20 percent tip on top of the cost of the metered fare. The class believed that the money would go to the driver, but in fact, Uber kept part of the charge for itself as its own additional revenue and profit for each ride. The settlement will essentially provide members of the class with a full refund of the 40 to 50 percent that Uber retained from the 20 percent gratuity charge it imposed on customers.

Caren Ehret et al. v. Uber Technologies Inc., (U.S. District Court for the Northern District of California, San Francisco Division), Case number 3:14-cv-00113.

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

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