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— Labor & Employment Law —
Defending Employer's Rights

Labor and Employment Law Update

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In This Issue

- Kindred Healthcare Pays \$16.5 Million to Settle FLSA Wage/Hour Lawsuit;
- Doctor Awarded \$10 Million For Discrimination, Retaliation and Wrongful Termination;
- Radio Shack Pays \$7.4 Million Award For Age Discrimination / Wrongful Termination;
- Bank of America Pays \$3.6 Million to Settle FLSA Wage/Hour Lawsuit;
- Student Athletes Have Sued The NCAA For Minimum Wage Pay; and
- Three Ex-Union Leaders (A Father And His Two Sons) With Connections To Organized Crime Are Sentenced To 28 Years For Racketeering, Extortion, Money Laundering, and Receiving Unlawful Labor Payments.

Employee Pensions Protected — City of Stockton Maintains 100% Pension Coverage Despite Having Filed For Bankruptcy

In approving the City of Stockton's restructure plan to get out of bankruptcy, Judge Klein rejected the argument of the last holdout creditor that the plan was unfair because it satisfied 100% of the City's pension obligation, but only allowed a 1% recovery to bond investors. Judge Klein had recently ruled that (1) CalPERS didn't deserve special protection; (2) the public pension fund was vulnerable to cuts in bankruptcy; and (3) the City had the option of ending its contract with CalPERS. However, in approving the City's decision to maintain the contract with CalPERS and avoid a 60% cut in employees' pensions, Judge Klein stated this plan was the best way to restructure the City's debts, because the workers would have been the real victims if the City opted to end the CalPERS contract.

Stockton's Pension-Protecting Bankruptcy Plan Approved, Bloomberg.com (October 20, 2014)

Michael Bathon

<http://www.bloomberg.com/news/2014-10-30/stockton-california-wins-court-approval-of-bankruptcy.html>

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DISCRIMINATION / RETALIATION

Doctor Awarded \$10 Million For Retaliation and Wrongful Termination.

The American Arbitration Association awarded a claimant doctor \$9,957,411 for discrimination, retaliation and wrongful termination. The doctor alleged that when he reported safety concerns and alleged discrimination to his employer, the employer failed to investigate his complaints. Then after claimant reported his concerns to the government, which did conduct an investigation, defendants retaliated against him by demoting him and ultimately terminating him and refusing to rehire him.

Eleftherios Vamvakas M.D., Ph.D. v. Consultants For Pathology And Laboratory Medicine, LA Daily Journal, Verdicts and Settlements (October 31, 2014) American Arbitration Association, Case No.: 72 166 01049 12.

DISCRIMINATION / NATIONAL ORIGIN BIAS

Grocery Chain Settles Bias Lawsuit For \$6.5 Million

The Bashas grocery chain has agreed to settle a discrimination/bias class action with a class of approximately 12,000 Hispanic workers, who accused the chain of paying them less than white workers. Specifically, the class alleged that the grocery store used lower pay scales in its Food City stores, which catered to Hispanic customers, than at its Bashas or gourmet-focused A.J. Fine Foods locations. The Food City workforce was 75% Hispanic, while the workforce of the Fine Foods locations was mostly white. Allegedly, the president of the chain personally set the pay scales each year. In 1999, for example, the

disparity of pay between Hispanic and White was nearly \$1/hour for equally experienced employees.

Judge Approves Bashas' \$6.5M Settlement In Bias Suit, Law360 (October 22, 2014) Aaron Vehling

WAGE/HOUR

Unpaid Interns Continue To File New Class Actions Against Media And Fashion Companies

Calvin Klein Inc. has been accused of misclassifying interns as exempt from minimum wages and paying them nothing, while requiring them to perform tasks that would otherwise have been performed by paid staff, including data entry, inventory and setting up for a fashion show. The lead Plaintiff worked approximately 30 hours each week and performed tasks ranging from researching trends to checking merchandise in and out. The class consists of more than 100 interns who were employed any time after October 2008.

Calvin Klein, PVH Facing Newest Unpaid Intern Class Action, Law360 (October 22, 2014) Tess Hofmann

Old Dominion Freight Line Pays \$3.4 Million To Settle Wage/Hour Lawsuit

Old Dominion settled a wage/hour class action with plaintiffs for \$3.4 million. The class alleged that the defendants failed to provide pick-up and delivery drivers compensation for missed or non-compliant meal and rest breaks. The drivers also alleged failure to pay minimum wage.

Rodriquez v. Old Dominion Freight Line, LA Daily Journal, Verdicts and Settlements (October 31, 2014) U.S. District Court Central District, Case Number 1:12-cv-00891 -DSF-RZ.

FLSA

Student Athletes Sue NCAA For Minimum Wage As Temporary Employees

A former college soccer player has filed a class action against the NCAA contending that student athletes are temporary employees who must be paid at least minimum wage under federal law. The suit compares students who participate in work study part time employment programs to student athletes and argues that the part time workers get better treatment. The absurd result of the NCAA bylaws preventing student athletes from receiving compensation is that work study participants who are ushers and sell programs at the games are paid \$9 hour, but the student athletes receive no pay. The NCAA states that the student-athletes' passion for their sport and commitment to their teammates should not be diminished by comparing it to punching a time clock.

NCAA Athletes Are Temporary Employees, FLSA Suit Says, Law360 (October 22, 2014)
Ben James

LABOR / UNION

City Must Meet and Confer With Union Prior To Implementing A Planned Reorganization Of Police Department

The California Court of Appeal held that the City of Indio must demonstrate full compliance with the "meet and confer in good faith" requirements of the MMBA, before the City can implement a planned reorganization of the command staff of the City's police department. Further, the Court held that the Police Command Unit Association is entitled to recover attorneys' fees because the litigation enforcing police officers' procedural rights under POBRA

conferred a significant benefit on the general public by helping to "maintain stable relations between peace officers and their employers and thus to assure effective law enforcement."

Indio Police Command Unit Association v. City of Indio, (2014) ___ Cal.App.4th ___.
<http://www.courts.ca.gov/opinions/documents/G050051.PDF>

Ex-Union Leaders With Connections To Organized Crime Sentenced To 28 Years

The Second Circuit upheld the convictions of three related ex-union leaders who had taken part in schemes to extort money from business owners. The Court of Appeal found no abuse of discretion by the court for admitting proffered evidence that the men were connected to organized crime. The father and two sons received a combined 28 years in prison for their participation and orchestration of more than three decades worth of racketeering, extortion, money laundering, witness tampering, and receiving unlawful labor payments.

2nd Circ. Upholds Ex-Union Leaders' Extortion Convictions, Law360 (October 22, 2014) Ben James



NLRB

Ruling In FedEx Case Brings Delivery Workers Closer To Unionization

The NLRB ruled that a group of FedEx delivery truck drivers were not independent contractors but rather were employees. Not only will FedEx Ground Package Systems Inc. have to contend with the drivers' union, but the entire delivery industry could face increased unionization efforts. In 2010, a group of 20 delivery truck drivers voted to join a local bargaining unit of the International Brotherhood of Teamsters. FedEx, however, refused to bargain with the union, claiming that they were independent contractors and not their employees. The deciding factor for the NLRB was whether the drivers had an opportunity to make money off their routes by expanding them or selling access to them to other drivers. In the case of FedEx, the NLRB specifically looked at whether drivers had ever pursued such an entrepreneurial opportunity or not.

Labor Board: Drivers Are Employees, Los Angeles Daily Journal (October 6, 2014)
Laura Hautala

Employers Cannot Require Employees To Waive Right To Bring Class Actions As A Condition Of Employment (No 1)

The NLRB reaffirmed its 2012 *D.R. Horton* holding that that an employer violates the NLRA when it requires employees to sign an agreement that precludes them from filing joint, class, or collective claims addressing their wages, hours, or other working conditions against their employer in arbitration or litigation. The NLRB reached this result again relying upon the right of employees to engage in collective action to improve working conditions.

Murphy Oil USA, Inc. and Sheila M. Hobson (361 NLRB No. 72, 10-CA-038804, 10/28/14)

<http://www.employmentlawworldview.com/files/2014/10/reaffirmed-employees%E2%80%99-right-to-bring-class-and-collective-action-claims.pdf>

Employer Cannot Require Employees To Waive Right To Bring Class Actions As A Condition Of Employment (No 2)

A National Labor Relations Board Judge ruled that clothing retailer Ross Stores Inc. violated federal labor law when it required employees to sign an arbitration agreement that prohibited them from pursuing class or collective actions. Finding in favor of the employee, the NLRB found that the agreement requiring employees to waive the right to class actions in court or in arbitration interfered with employees' rights to participate in concerted activity to try to improve their pay and working conditions.

NLRB Judge Finds Against Ross Stores' Arbitration Pact, Law360 (October 22, 2014)
Scott Flaherty



OTHER

Question Of Class Arbitrability Is One For Trial Court, And Not For Arbitrator Unless Clearly Agreed To In Advance

The California Court of Appeal held that deciding whether an arbitration agreement authorizes class arbitration requires the trial court to decide those claims are covered by the agreement, unless the parties clearly and unmistakably agreed to have the arbitrator decide that question. Here, while the employee did sign an “Employment Acknowledgment and Agreement,” which required the parties to submit all employment-related disputes to arbitration, the Agreement did not allow for class arbitration. The issue of class arbitrability was therefore for the court to decide, not the arbitrator.

Network Capital Funding Corporation v. Erik Papke (2014) ____ Cal.App.4th ____.
<http://www.courts.ca.gov/opinions/documents/G049172.PDF>

IN THE TRENCHES

Kindred Healthcare Pays \$16,500,000 To Settle FLSA Wage/Hour Lawsuit

Kindred Healthcare settled a wage/hour class action with plaintiffs for \$16.5 million. The class alleged that the defendants failed to pay employees for all hours worked, committed meal and rest break violations, failed to provide accurate wage statements and failed to pay overtime wages.

Debbie Fitzpatrick-Seckler, et al. v. Kindred Healthcare Inc., et al., *LA Daily Journal, Verdicts and Settlements* (October 24, 2014) U.S. District Court Central District, Case Number 8:10-cv-01188-DDP-RZ.

Employer Pays \$8 Million To Settle Wrongful Termination Action.

After a three week jury trial, Defendant employer settled a wrongful termination action for \$8,000,000. Plaintiff employee alleged that after informing her employer that she had been diagnosed with breast cancer, the employer harassed her, and denied her request for reasonable accommodations. Plaintiff also alleged that when she attempted to return to her position after her medical leave, she was told there were no available positions, was denied accommodations and was terminated.

Kandi Dudley v. [REDACTED], *LA Daily Journal, Verdicts and Settlements* (October 17, 2014) Los Angeles Superior Court, Case Number BC500007.

Radio Shack Pays \$7,383,100 Award For Age Discrimination/Wrongful Termination

A jury awarded \$7.38 million to a former Radio Shack employee. The jury found that the employee’s filing of an internal complaint of illegal, fraudulent, or unethical practices against another employee was a substantial motivating reason for Radio Shack’s decision to terminate him.

Jose Juarez v. Radio Shack Corporation, et al., *LA Daily Journal, Verdicts and Settlements* (October 10, 2014) Los Angeles Superior Court, Case Number BC466302.

Bank of America Pays \$3,600,000 To Settle FLSA Wage/Hour Lawsuit

Bank of America settled a wage/hour class action with bank employees for \$3.6 million. The class alleged that the bank failed to provide accurate wage statements because it would prepare the wage statements before the close of the pay period and/or because the bank failed to state the correct number of hours actually worked on the wage statements of non-exempt employees.

Albert Lopez et al. v. Bank of America, LA Daily Journal, Verdicts and Settlements (October 17, 2014) U.S. District Court Northern District, Case Number 3:10-cv-01207-JST.

Hawaii Farm Owners Contribute to Pay \$2.4 Million To Settle Discrimination Action Brought By EEOC

A class of Thai workers settled an EEOC complaint brought against a number of defendant farm owners in Hawaii for \$2.4 million. The class accused defendants of subjecting them to a pattern of discrimination, which included disparate treatment and hostile work environment based on national origin, retaliation and constructive discharge.

U.S. Equal Employment Opportunity Commission v. Global Horizons Inc., et al., LA Daily Journal, Verdicts and Settlements (October 3, 2014) U.S. District Court Hawaii, Case Number 1:11-cv-00257-LEK-RLP.

\$1 Million Jury Verdict For Two LAPD Officers

Two police officers for the LAPD received a jury verdict for \$1,031,534 in their action against the City of Los Angeles for retaliation for reporting misconduct. The officers alleged that they were transferred to lesser, non-covered positions that were not only below their skill levels, but were far from their respective homes. The officers alleged that the transfers took place shortly after they reported to LAPD that other detectives were failing to properly record their overtime in violation of federal and state labor laws.

Loren Farell, Juan Baello v. City of Los Angeles, LA Daily Journal, Verdicts and Settlements (October 17, 2014) Los Angeles Superior Court, Case Number BC491484.

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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