



# THE ZAPPIA LAW FIRM, A PROFESSIONAL CORPORATION

— Labor & Employment Law —  
Defending Employer's Rights

## Labor and Employment Law Update

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### **SEXUAL HARASSMENT / RETALIATION**

#### **California Assemblyman Sued For Exposing Himself To Former Legislative Director**

An 18-year veteran legislative employee filed a lawsuit against a California Assemblyman, accusing him of: (1) misusing state resources by having her perform personal tasks for him and his private law practice; and (2) for fostering a hostile work environment, including exposing himself to her. She alleges that she was responsible for ensuring that the Assemblyman behaved, as well as making certain that he bathed, used deodorant and wore clean clothes. She also alleges having to help him find an apartment, purchase his furniture and linens, and remind him to pay his rent. She alleges she was terminated only one month after reporting his harassing behavior and his violations of state laws governing elections, lobbying, the personal use of state resources, political corruption and other offenses. The Assemblyman calls the suit “defamatory,” and states he will “defer to the justice of the court.”

*Calif. Lawmaker Improperly Used, Harassed Staff, Suit Says*, Law360 (September 17, 2014) Aaron Vehling

**The Zappia Law Firm**

A Professional Corporation

Los Angeles, Orange County, Silicon Valley

Telephone: (213) 814-5550 - Facsimile: (213) 814-5560

[www.zappialawfirm.com](http://www.zappialawfirm.com)

## **PREGNANCY DISCRIMINATION RETALIATION**

### **NY Mets Senior Vice President Alleges Termination For Unwed Pregnancy**

Leigh Castergine, the first-ever female senior vice president of the New York Mets, filed a federal lawsuit alleging she was fired in retaliation for filing sexual discrimination complaints. Castergine alleges that the son of the principal owner of the team is old fashioned, that he became fixated on her pregnancy, and that stated he was “morally opposed” to her having a baby without being married. Her lawsuit further alleges that neither her boss nor the team’s general counsel reported the discriminatory behavior or did anything to investigate or try to stop it, even though they both had witnessed it. Castergine alleges that when she complained to the team’s human resources director, she was told to quit. She alleges she was terminated in retaliation for her complaints, even though the team states it was because she failed to meet sales goals after she gave birth.

*Mets Owner Told Pregnant Exec To Get Married, Suit Says*, Law360 (September 10, 2014) Michael Lipkin  
<http://www.law360.com/employment/articles/576070>

## **DISCRIMINATION / SEX BIAS**

### **EEOC Begins Prosecuting Cases Of Sex Discrimination Against Gay And Transgender Employees**

The U.S. Equal Employment Opportunity Commission filed its first ever lawsuits over sex discrimination against transgender individuals. The EEOC brought an action in Michigan federal court against a funeral home for terminating a funeral director/embalmer two weeks after she told her

employer she would begin dressing in different clothes as she transitioned from male to female. The EEOC also brought an action in Florida federal court against an eye clinic that fired its director of hearing services after she began wearing feminine clothes to work and told the clinic she was transitioning from male to female. Two months later the clinic hired a male worker who conformed to traditional gender norms. In both suits the EEOC seeks compensatory and punitive damages.

*EEOC Files Historic Sex Bias Suits For Transgender Workers*, Law360 (September 25, 2014) Allissa Wickham  
<http://www.law360.com/employment/articles/581182>

## **DISCRIMINATION / AGE BIAS**

### **DSW Shoes Settles EEOC Age Bias Lawsuit For \$900,000**

DSW Shoes “unequivocally denies” the claims that it regularly terminated employees over 40 years old, and states employee separations detailed in the suit were driven by economic circumstances, not by age discrimination. The complaint filed by the EEOC alleges DSW discriminated against employees by directly terminating them or instructing its managers to terminate certain employees on the basis of their age. The complaint also alleges that DSW terminated some of its employees for refusing to terminate workers because of their age. DSW claims their “decision to settle this case mitigates the costs associated with a lengthy legal proceeding and is in the best interest of [their] associates and shareholders.”

*Shoe Giant DSW Pays \$900K To End EEOC Age Bias Row*, Law360 (September 15, 2014) Lisa Ryan  
<http://www.law360.com/employment/articles/577248>

## **DISCRIMINATION / EQUAL PAY**

### **Legislation Proposed To Ensure Equal Pay For Women**

The U.S. Senate voted to advance proposed legislation meant to ensure female employees receive equal pay for their work. The bill proposes to amend the Fair Labor Standards Act and offer new remedies for pay discrimination on the basis of sex. The Senators who co-sponsored the bill said the proposal will combat sex discrimination and strengthen federal government enforcement of pay bias issues.

## **WAGE/HOUR**

### **HP Pays \$11.8 Million To Settle Overtime Claims**

A class of information and telecommunications employees has reached an \$11.8 million settlement with HP for various wage-and-hour violations, including failure to properly pay overtime wages. The class alleged that the company had improperly misclassified certain workers as exempt from the overtime provisions of the Fair Labor Standards Act. The settlement consolidates three different class actions against HP and a subsidiary, and will release both companies from all overtime-related FLSA claims made by the classes.

### **Angelica Textile Services Pays \$3 Million To Settle Class Action Overtime Lawsuit**

The class alleged that the company's time clock rounded to the nearest quarter of an hour, and that if the original punch time would have resulted in a rounding upwards favorable to the employee, the punch times would be manually modified downward to the detriment of the employee.

### **Raiderettes Settle Unpaid Wages Claim With NFL for \$1.25 Million**

Members of the Oakland Raiders cheering squad have reached a \$1.25 million settlement with the NFL. Each of the 90 cheerleaders will receive an average of \$2,500 to \$6,000 per season; depending upon which seasons they worked. The deal includes penalties under CA law and provides compensation for unpaid wages, interest and unreimbursed business expenses. You may recall from our prior newsletters that the lawsuit alleged: (1) the Raiderettes were not paid until the end of the season; (2) they weren't paid for all hours worked; (3) they were forced to pay many of their own business expenses; and (4) they were paid less than \$5/hour when all time spent rehearsing, performing and appearing at events was factored in.

### **Parent Company May Be Liable For Subsidiary Company's Wage Claims**

The California Court of Appeal held that an employer is broadly defined as including anyone who indirectly, or through another person, exercises control over the wages, hours or working conditions of an employee. Additionally, the Court held that more than one entity may be considered an employer, where the entities control different aspects of the employment relationship. Control over how services are performed is important in determining whether an employment relationship exists. Where a parent company supervises and controls the job functions of an employee, that company may be deemed an employer. Here, the parent company, replaced the time clocks, and had centralized control over the human resources, accounting and payroll services of the subsidiary company.

## LABOR / UNION

### **Unionized Ironworkers Plead Guilty To Trying To Strong-Arm Contractors Into Hiring Union Workers**

Two ironworkers pled guilty to RICO Act conspiracy, conspiracy to damage property by fire, and use of fire to commit a felony. One of them admitted that he (1) participated in more than 10 extortions or attempted extortions with the intent to force nonunion contractors to hire union labor; and (2) recruited other members to a “goon squad,” referred to as his “Shadow Gang,” to help commit the crimes. One of them faces up to 60 years in prison with a \$750,000 fine, and the other faces up to 110 years in prison with a \$1.5 million fine.

*2 Union Workers Enter Guilty Pleas In 'Shadow Gang' Case*, Law360 (September 22, 2014) Kelly Knaub

<http://www.law360.com/employment/articles/579869>

## NLRB

### **NLRB Orders CNN To Rehire Nearly 100 Union Workers Who Were Laid Off In A 2003 Reduction in Force**

The NLRB ordered CNN to rehire 100 union workers because they had ended a union contract out of antiunion animus. CNN claimed that they ended the contract with the union to create a small staff that would be better suited to the new digital technologies emerging in 2003. The Board, however, called CNN’s explanation pretextual, as an effort to avoid the costs and obligations required under the union contract. The Board found that the decision to end the contract did not involve a change in the scope and direction of CNN’s business; rather, it involved a change in the job description of the employees who performed the same

work, with the same equipment to produce the same product. The Board gave CNN two weeks to rehire the former workers, to compensate any worker who took a \$30,000 per-year pay cut, and to resume all bargaining obligations.

*CNN Must Rehire 100 Union Workers, NLRB Says*, Law360 (September 15, 2014) Michael Lipkin

<http://www.law360.com/employment/articles/577424>

### **Hyatt Hotels Agrees To Pay \$1 Million to 98 Housekeepers Who Were Fired In 2009**

Hyatt Hotels will pay the \$1 million settlement to end the union’s boycott of three Hyatt Hotels in the Boston/Cambridge area. The hotel drew a wave of criticism five years ago, when it outsourced the housekeeping work to Hospitality Staffing Solutions, and paid the new workers about half of what it paid the 98 who were fired. The 98 housekeepers will share the settlement according to how long each one served the hotel, and will have priority in hiring as new jobs become available at future Hyatt-managed hotels.

*Hyatt Ends Union's Boycott With \$1M For Fired Housekeepers*, Law360 (September 29, 2014) Allissa Wickham

<http://www.law360.com/employment/articles/581389>

## OTHER

### U.S. Supreme Court Declines To Hear Appeals Of Gay Marriage Cases

Yesterday, the U.S. Supreme Court declined to take up the hotly contested issue of gay marriage, a surprise move that will allow gay men and women to marry in five states where same-sex weddings were previously banned. By rejecting appeals in cases involving Virginia, Oklahoma, Utah, Wisconsin and Indiana, the Court left intact lower-court rulings that struck down bans in those states. Other states under the jurisdiction of appeals courts that struck down the bans will also be affected, meaning the number of states with gay marriage is likely to quickly jump from 19 to 30.

*High Court Won't Hear Same-Sex Marriage Appeals*, Law360, (October 6, 2014) Allissa Wickham

## IN THE TRENCHES

### AT&T Pays \$5 Million To Settle FLSA Wage/Hour Class Action

A group of employees agreed to a \$5 million settlement with AT&T Mobility Services for violations of the California Labor Code and Wage Orders. The employees alleged failure to pay all wages when due, including regular wages and overtime pay. They claimed that AT&T's overtime policy failed to include their commission payments when it calculated the "regular rate" for purposes of computing overtime, resulting in a wage payment shortfall.

*Prizler v. AT&T Mobility Services Inc.*, LA Daily Journal, Verdicts and Settlements

(September 12, 2014) U.S. District Court for the Central District of California, Case Number 2:12-cv-06016-SVW-RZ.

### International Paper Pays \$2.875 Million To Settle FLSA Wage/Hour Class Action

A group of employees agreed to a \$2.875 million settlement with their employers for violations of the California Labor Code. The workers alleged failure to pay overtime, failure to provide statutory meal and rest periods, or compensation in place of those periods.

*Raymond Vaca v. Tin Inc, International Paper Co.*, LA Daily Journal, Verdicts and Settlements (September 12, 2014) U.S. District Court for the Northern District of California, Case Number 5:12-cv-01425-PSG.

### \$1.583 Million Jury Verdict for Retaliation / Wrongful Termination

Sohelia Abyane, a supervising children's social worker, obtained a \$1.5 million jury verdict against the County of Los Angeles for discrimination and retaliation. Plaintiff, a Persian and member of a protected class based on national origin, contended that after 23 years of "very good" performance ratings and salary increases, she began having trouble when she was assigned to report to a new supervisor. Plaintiff alleged that her new supervisor made racist remarks against her and called all Iranians terrorists. Plaintiff filed complaints with her supervisor, but alleges they were never investigated. Abyane was later terminated, and the supervisor admitted that she made the termination decision after Abyane filed her complaints.

*Abyane v. County of Los Angeles*, LA Daily Journal, Verdicts and Settlements (September 12, 2014) Los Angeles Superior Court, Case Number BC489359.

### **\$1 Million Settlement of Discrimination, Harassment and Retaliation Action**

Lisa Davis, a heavy equipment operator, filed a civil action against her employer for discrimination, harassment and retaliation. Plaintiff claimed that she had difficulty accessing the portable toilets which were often located miles away from her worksite and left in an unsanitary condition. Plaintiff alleges that when she asked her foreman, safety officer and project manager for assistance with the problem that he told her to “go find a bush.” On another occasion, Plaintiff opened the door to the women’s portable toilet to find feces smeared all over the seat and a pornographic magazine placed on the toilet dispenser. Plaintiff claimed that the incident was not investigated even though she reported it immediately. Finally, only one week after Plaintiff complained to the company’s equal opportunity officer, nearly the entire crew was laid off, even though the job was only half done. Within three weeks a full day shift had been hired back, but plaintiff was never rehired. A jury awarded Plaintiff \$270,000 in compensatory damages. The parties later settled for a total of \$1 million at mediation of her punitive damages claim.

*Lisa Davis v. Kiewit Pacific Co.*, LA Daily Journal, Verdicts and Settlements (September 12, 2014) Los Angeles Superior Court, Burbank, Case Number ECU4765.

### **\$931,200 Award For Sexual Harassment/Hostile Work Environment**

Plaintiffs brought a civil action against their supervisor and P.F. Chang’s for sexual harassment and hostile work environment. Plaintiffs alleged they were subjected to sexual comments and conduct, including sexual jokes with double meaning, references to penises, catcalls, and demeaning

comments toward female workers. Plaintiffs also alleged that their supervisor would give them daily hugs, and would rub their backs starting at their shoulders and working all the way down to right above their buttocks. Plaintiffs also alleged that their supervisor called them “sluts” and “whores” when they rejected his physical advances. At arbitration, Avila was awarded \$456,240 and Andrade was awarded \$474,960.

*Linda Andrade, Liliana Avila v. P.F. Chang’s Bistro Inc., Angel Mendoza, et al.*, LA Daily Journal, Verdicts and Settlements (September 19, 2014) San Diego Superior Court, Case Number 37-2012-00058424-CU-OE-NC.

As always, don't hesitate to contact any of our attorneys if you have any questions or comments.

THE ZAPPIA LAW FIRM  
A Professional Corporation  
Los Angeles, Orange County, Silicon Valley  
Phone: (213) 814-5550  
Facsimile: (213) 814-5560  
[www.zappialawfirm.com](http://www.zappialawfirm.com)

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- Investigating Discrimination, Harassment and Retaliation
- FMLA / CFRA / Pregnancy Leave
- Disability Discrimination Amendments
- Pregnancy Disability Law Amendments
- Employee Discipline
- Workplace Investigations
- Union Avoidance and Labor Relations

### **Presentations**

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

- The Limitations of AB 646 Post Impasse Procedures
- Labor Negotiations
- Pension Reform
- Police Officer Bill of Rights (POBR)
- Fire Fighter Bill of Rights (FOBR)