LYNCH, GILARDI & GRUMMER
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CALIFORNIA EMPLOYMENT LAW NEWSLETTER

What's New for California Employers?

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The following is a brief summary of the significant employment law developments since our last newsletter.[1]

RETALIATION

Whistleblower: A plaintiff must prove that any whistleblowing disclosure was made in good faith and for the public good and not for personal reasons. *Mize-Kurzman v. Marin Community College Dist.* In so holding, the court found "it may often be the case that a personal agenda or animus towards a supervisor or other employees will be one of several considerations motivating the whistleblowing employee to make a disclosure regarding the conduct that the employee also reasonably believes violates a statute or rule or constitutes misconduct." *Comment*: So long as there is a potentially legitimate motive for a whistleblowing disclosure, an employee is protected.

False Charges: In appropriate circumstances, an employer may discipline or terminate an employee for making false charges of sexual harassment. *Joaquin v. City of Los Angeles*. In this case, the person seeking discipline of an employee falsely alleging sexual harassment played no role in nor had the power to affect the termination of that employee. *Comment*: To be guilty of retaliation, the alleged retaliator had to have disciplined or been in a position to discipline the alleged victim.

WAGE AND HOUR

Meal/Rest Breaks: A successful party to a lawsuit claiming a failure to provide meal or rest breaks is not entitled to an award of attorneys' fees even if they should "prevail." *Kirby v. Immoos Fire Protection, Inc.* In this case, two former employees successfully brought a lawsuit for the denial of their meal or rest breaks. *Comment*: Practically, this case will discourage a good many of the single-plaintiff lawsuits alleging meal and rest break violations for economic reasons.

Successor Liability: A car wash operator was statutorily liable for unpaid wages and penalties owed by a separate and unrelated business which had operated the car wash at the same location, before being evicted by the property owner. *People ex rel Harris v. Sunset Car Wash, LLC*. In this case, the successor business used the same facilities to perform substantially the same services as the predecessor. *Comment:* This decision is based on legislation that specifically pertains to car wash operators, apparently due to widespread abuse in this industry.

MISCELLANEOUS

Defamation: An employee successfully blocked a bank employer's lawsuit for defamation where the employee allegedly posted defamatory messages on a section of Craigslist "under the guise of anonymity, (making) false and libelous statements about the (bank's) operations, the integrity of its CEO and founder, the safety of depositors' funds, and made false statements about audits and regulatory actions." The employee did this through a Strategic Lawsuit Against Public Policy (SLAPP) motion. *Summit Bank v. Robert Rogers.* The court found that the suit was brought for the illegitimate purpose of chilling Rogers' right to speak freely about the bank. *Comment*: Defamatory actions against former employees should be carefully considered, as successful SLAPP motions striking down the defamation suits can be quite costly as the court's order may require the losing party to pay the winning party's attorney's fees and costs.

FEHA Protection for Partners: A member of a partnership was entitled under the Fair Employment and Housing Act (FEHA) to be

[1] This summary is intended to be a brief overview of significant legal developments and is not an in-depth analysis of the cases or statutes discussed. Our clients are advised to contact their employment attorney before making significant decisions related to the legal developments reported herein.

protected from retaliation by the partnership for her actions in reporting the alleged sexual harassment of certain employees. *Fitzsimons v. Calif. Emergency Physicians Medical Group.* Here, plaintiff was an emergency physician who was one of 700 members of a general partnership when she reported to two of her supervisors that "certain officers and agents of CEP" have sexually harassed female employees of CEP. *Comment*: FEHA protection extends to owners of businesses.

Disability Discrimination: Working at home may not be a reasonable accommodation of a disability where physical attendance of the employee is necessary. *Samper v. Providence St. Vincent Medical Center*. In this case, plaintiff was a neonatal nurse who was diagnosed with fibromyalgia which caused chronic fatigue, causing her to request unplanned absences. *Comment:* Because plaintiff was unable to perform an essential function of her job (i.e., daily attendance at work) she was not "qualified" for protection under the ADA.

Unfair Business Practices: An employee forfeited her unfair competition claim of unfair wage practices because she did not allege any statutory predicate for the claim. *Aleksick v. 7-Eleven, Inc.* The Unfair Competition Law (UCL) does not prescribe specific activities but instead prohibits any "unlawful, unfair or fraudulent business act or practice" such as contained in other statutory or case law. *Comment:* The UCL is only an enhancement of rights defined in other case or statutory law.

Arbitration: Where an employment agreement containing an arbitration clause applied only to contract disputes and was an "integrated" agreement, claims for discrimination or harassment were not subject to the arbitration agreement. *Grey v. American Management Services.* Because the arbitration agreement in the offer letter was narrowly written to cover only certain claims, the court would not expand the reach of the arbitration agreement to other employment-related claims. *Comment:* This reminds employers to be sure that their arbitration agreements cover any and all disputes which might arise from an employment relationship or termination thereof.

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If you have questions regarding any of the aforementioned employment law developments, contact your LGG attorney or Ron Souza at rsouza@lgglaw.com.