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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

DISABILITY DISCRIMINATION

Reasonable Accommodation: A disabled police officer's inability to perform the duties of an active police officer relevant to the issue of the ability to perform alternative light duty work. *Cuiellette v City of Los Angeles*. In this case, Plaintiff had been able to perform light duty work following work-related injuries, but the City later terminated him because he had been designated as "100% disabled" for purposes of workers compensation. *Comment:* An employee's demonstrated ability to do certain jobs is strong evidence that he is not unable to perform the essential duties of that same job. Here, the employer undoubtedly reacted to what it felt the employee was overreaching in receiving both workers compensation benefits while working a normal job.

Violence Related to Disability: Employer may properly distinguish between disability-caused workplace misconduct involving threats of violence against co-workers and disability itself when terminating a bipolar employer. *Wills v*

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.

Superior Court. In this case, the employee became belligerent when having to await admission to her place of business. Later, she was heard to say that she had added the offending coworker to her "Kill Bill" list for delaying her admission. *Comment:* Demonstrated aggression or violence will generally override an employee's claim of disability accommodation.

WAGE AND HOUR

Wage Agreements: A wage agreement providing for predetermined overtime compensation is permissible. *Arechiga v Dolores Press, Inc*. In this case, the employee entered into a written agreement compensating the employee for both his regular hourly rate (\$11.14/hour) and an hourly overtime wage (\$16.71/hour). The parties then agreed to fix earnings of \$880 per week as covering all regular and overtime entitlement. *Comment:* This decision is somewhat surprising as it does allow for abuse in the form of undercompensating employees for overtime should they work hours beyond what was originally anticipated.

Meal Breaks: Employers need only "provide" employees the opportunity to take a meal break. *Tien v Tenet Healthcare Corporation*. This case involved a petition to certify a case for class action. *Comment:* This case may/may not have precedential effect depending on what the California Supreme Court rules on this issue in the cases currently before it.

ARBITRATION

An arbitration agreement may not foreclose an employee's ability to bring wage and hour claims before the State Labor Commissioner. *Sonic-Calabasas A, Inc. v Moreno*. The employer's attempt to foreclose wage claims to the Labor Commissioner through an arbitration agreement rendered it invalid. *Comment:* Employers must be careful not to unnecessarily restrict an employee's ability to exercise rights through an arbitration, rather than a civil court proceeding, as such may invalidate the entire arbitration agreement.

Class Action Waivers: The US Supreme Court has struck down a California Court's refusal to enforce class action waivers in consumer arbitration agreements on the ground that state law is preempted by the Federal Arbitration Act. *AT&T Mobility, LLC v Concepcion*. The Supreme Court overruled the California Court of Appeal's ruling that the arbitration clause was unconscionable in that it prohibited customers from bringing any claims in a class action. *Comment:* While this is a consumer's rights (cell phone service contract) case, it signals the likelihood that similar class action waivers in employment agreements may be enforced.

PRIVACY

Home Phone Number and Address: A California employer may not reveal an employee's home phone number and address to an employee's union without first providing notice and an opt-out option to employees. *County of Los Angeles v Los Angeles County Employee Relations Committee*. The Court's decision expressly found that the employee's rights are guaranteed by the California Constitution which overrides a union's rights

to communicate with represented employees. *Comment:* This case signals that there are limitations on a union's ability to obtain information on its members from the employer.

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

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