



LYNCH, GILARDI & GRUMMER

A Professional Corporation

ATTORNEYS AT LAW

SINCE 1978

California Employment Law Newsletter

What's New for California Employers?

Ronald J. Souza
Lynch, Gilardi & Grummer
475 Sansome Street, Suite 1800
San Francisco, CA 94111
(415) 397-2800

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

REVERSE DISCRIMINATION

Reverse Discrimination: In a closely-watched case, the U.S. Supreme Court held that a group of White firefighters in New Haven suffered unfair discrimination because of their race when the city scrapped the results of a promotional exam. *Ricci v. DeStefano*. In this case, a 2003 test was given for promotion to lieutenant and captain, which yielded no Black firefighters eligible for advancement. A lawsuit was brought by eight firefighters, one of them Hispanic, who claimed racial discrimination in discarding the test results. *Comment:* This 5-4 decision by the Supremes confirms that Caucasians enjoy the same protection under Civil Rights laws as do non-Caucasians.

ARBITRATION

Discrimination Claims: Unionized employees were required to arbitrate age discrimination claims under a Collective Bargaining Agreement (CBA) arbitration provision. *14 Penn Plaza LLC v. Pyett*. The U.S. Supreme Court ruled that such a provision in a Collective Bargaining Agreement was enforceable under federal law.

Comment: Employers should be aware that a CBA containing a non-discrimination provision can compel the arbitration of a discrimination suit brought by a unionized employee.

WAGE AND HOUR

Misclassification: Unlicensed accounting associates were not exempt employees and were thus entitled to overtime pay. *Campbell v. Price Waterhouse Coopers, LLP*. The close supervision of the employees, as required by law, rendered the associates non-exempt. *Comment:* An employee's unsupervised discretion is a key element in establishing an exempt status.

Unconscionability: An arbitration provision mandating the waiver of a right to bring a class action for meal and rest break claims was unconscionable, rendering the entire arbitration agreement unenforceable. *Franco v. Athens Disposal Company, Inc.* The written arbitration agreements applicable to trash truck drivers waived "any rights to join or consolidate claims in arbitration with others or to make claims in arbitration as a representative or as a member of a class or in a private attorney general capacity." *Comment:* Recent case law has clarified that blanket waivers of procedural rights to pursue class actions may render arbitration agreements unenforceable.

IMMIGRATION

"No Match" Regulation: The Department of Homeland Security has abandoned its "no match" regulation in favor of an E-Verify system. The Obama administration will support and continue to improve the E-Verify system (an electronic verification system).

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.

SEXUAL HARASSMENT

The California Supreme Court has affirmed a stringent standard for sexual harassment and emotional distress claims. *Hughes v. Pair*. In this case, defendant called plaintiff “sweetie,” “honey,” and claimed that he thought of her “in a special way, if you know what I mean.” Further, he told her that “you know everyone had a thing for you. You are one of the most beautiful, unattainable women in the world. Here’s my home phone number and call me when you are ready to give me what I want.” He also told plaintiff, “I’ll get you on your knees eventually. I’m going to f____ you one way or the other.” The Court found that the conduct was not “pervasive” in that only a few incidents were involved and it was not “severe,” as only vulgar and highly offensive comments were involved. *Comment:* If these comments had extended over a significant period of time, they probably would have qualified as actionable sexual harassment.

PUNITIVE DAMAGES

Wrongful termination alone will not support a finding of malice, oppression or fraud permitting the award of punitive damages. *Scott v. Phoenix Schools, Inc.*: In this case, plaintiff sued, contending that she had been terminated in violation of public policy for enforcing teacher-student ratio regulations. *Comment:* The courts continue to restrict the availability of punitive damages in employment lawsuits. Truly egregious conduct must be involved to trigger this entitlement.

CLASS ACTION

Private Attorney General Act (PAGA): The California Supreme Court has allowed an employee to proceed with his claim to recover penalties on behalf of himself and non-party employees under PAGA without satisfying the class certification requirements. *Arias v. Superior Court*. But the court held that the plaintiff cannot bring a claim in a representative capacity under California’s unfair competition law without meeting class certification requirements. *Comment:* This case is primarily significant to lawyers whose practice includes class action litigation. It emphasizes the strict procedural requirements that must be met to pursue representative litigation.

.....

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

© 2009 Lynch, Gilardi & Grummer, PC
This document has been provided for informational purposes only and is not intended and should not be construed to constitute legal advice. Please contact your employment attorney in connection with any fact-specific situation in which you intend to take significant employment action. State or federal law may impose additional obligations upon you or your company, apart from the aforementioned legal authorities.