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Alerts

California Employment Alert

March 23, 2010
Insights for Employers

Court Errs in Failing to Permit Employer to Argue "Mixed Motive" Defense to Pregnancy Discrimination Claim

A city bus driver was counseled regarding preventable accidents and attendance issues which transpired during her training and probationary periods. After receiving her performance evaluation, the driver was late to work again. Her tardiness on that occasion subjected her to termination. The city evaluated the performance of the driver and other employees who held the same position. It ultimately decided to terminate the driver due to her accidents and attendance issues. Before the driver was notified of the city's decision, she informed her supervisor that she was pregnant. The employee sued for pregnancy discrimination under the California Fair Employment and Housing Act. At trial, the city argued in favor of a jury instruction on the "mixed motive" defense. The court refused to allow the defense and instead instructed the jury that the city was liable for pregnancy discrimination if the employee's pregnancy was a motivating factor for the termination, even if there might have been other contributing issues. The employee prevailed at trial, and the city appealed. The California Court of Appeal determined that the lower court should have permitted the city to assert and argue the "mixed motive" defense, given the circumstances of her termination, such that the jury was instructed that an employer is not liable for actions motivated by both discriminatory and nondiscriminatory reasons if it establishes that the legitimate reason alone would have led to the same decision. This case illustrates the significance of having proper written polices and guidelines for any performance-related deficiencies that may lead to an adverse employment action. Criteria for termination and for passing probation should be clearly noted in an employee handbook and supervisors should be trained on the policy.

Attorneys

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Service Areas

Employee Benefits

Immigration

Labor & Employment

Workers' Compensation Defense

Harris v. City of Santa Monica, No. B199571 (Cal. App. 2d Dist. Oct. 29, 2009)

Tip-Pooling Policy That Includes Nontipped Workers is Permissible Under the Fair Labor Standards Act

A former waitress filed a putative collective and class action against her former employer alleging that the tip-pooling arrangement that included nontipped workers (i.e. kitchen staff) violated the minimum-wage provision of the Fair Labor Standards Act (FLSA). The employer contended that the tip-pooling arrangement was permissible so long as the employer paid its employees the minimum wage. The district court dismissed the employee's complaint. The United States Court of Appeals for the Ninth Circuit affirmed. The court concluded that the FLSA did not prohibit the tip-pooling arrangement that included nontipped workers because the employees were paid more than the FLSA's minimum wage requirements. Furthermore, the court opined that an employee is not required to be allowed to retain all of his or her tips when the employer does not claim a tip credit. In other words, the FLSA does not restrict tip-pooling when no tip credit is taken. Employers which have employees who receive tips should review their tip policies to ensure compliance with the FLSA, particularly where tip-pooling arrangements are involved.

Cumbie v. Woody Woo, Inc., No. No. 08-35718 (9th Cir. Feb. 23, 2010)

California Labor Code's "Kin Care" Provisions Not Intended to Apply to All Types of Sick Leave Policies

Pursuant to a collective bargaining agreement, an employer permitted employees to take paid sick leave of up to five consecutive days. Upon return to work, the employee would be entitled to another paid sick leave period. Employees were not permitted to accrue sick leave and there was no cap on the amount of leave that could be taken. Two employees sued the employer, questioning whether this policy ran afoul of California's "kin care" law, which requires employers which offer sick leave to allow their employees to half of their accrued sick leave to care for a child, parent, spouse or domestic partner. The question arose because, if there is no limit on the amount of paid sick leave which may be taken, it is unclear how "half" of the employees' sick leave could be designated for kin care. The California Supreme Court ultimately determined that the "kin care" law does not apply to accrued paid sick leave policies which provide for an uncapped number of paid days off, such as the one at issue in the case before the Court. The Court held that the California Labor Code's "kin care" provisions were not meant to apply to all types of sick leave policies, particularly here, where it was impossible to determine the amount of paid time off for sick leave.

McCarther v. Pacific Telesis Group No. S164692 (Cal. Feb. 18, 2010)

Private Employment Contract Cannot Shorten Statute of Limitations for Wage and Hour Claim

Several former employees of a temporary staffing firm sued their former employer for overtime compensation and other wage and hour California Labor Code violations. The employer argued that the claims were barred because a provision in the employees' employment agreements shortened the statute of limitations for such claims to six months and because the employees were subject to the administrative exemption. The trial court ultimately determined that the limitations period in the employment agreement was unenforceable and that the administrative exemption did not apply to the former employees. The California Court of Appeal affirmed. The court opined that the six-month contract statute of limitations was an unlawful attempt to restrict the employees' ability to enforce their unwaivable statutory rights under the Labor Code and was thus unenforceable, particularly because the employees would have otherwise had a three- or four-year time frame in which to have brought their claims. The court also held that the administrative exemption did not apply as these particular employees' duties were not managerial in nature and did not satisfy the test under a California Industrial Welfare Commission Wage Order. Employers are advised that attempts to shorten by private contract the statute of limitations applicable to a wage and hour claim or other labor statutes in California will be closely examined and potentially unenforceable.

Pellegrino v. Robert Half International, No. G039985 (Cal. App. 4th Dist. Jan. 28, 2010)