



Alerts

California Employment Alert

January 27, 2010

Labor & Employment

- [California Supreme Court Slashes Jury's Damage Award, and Applies 1:1 Ratio for Punitive Damages](#)
- [California Supreme Court Finds Attorney-Client Privilege Bars Disclosure of Opinion Letter](#)
- [Employees Protected From Discrimination As to Genetic Information](#)
- [Mistaken Overtime Claim Can Provide the Basis for a Claim for Wrongful Termination in Violation of Public Policy](#)
- [California Supreme Court Unanimously Holds Attorneys' Fees May Be Denied in Low-Recovery FEHA Cases](#)

California Supreme Court Slashes Jury's Damage Award, and Applies 1:1 Ratio for Punitive Damages

A long-term employee of a pharmaceutical company suffered from panic attacks, which often rendered her unable to work. The employer had a fairly complex attendance policy as well as a progressive discipline policy. Both policies were alleged to have put employees with disabilities at a disadvantage. The employee suffered numerous panic attacks and was tardy to or absent from work on several occasions. Although the employee advised the employer that her absences were related to her panic disorder, she was ultimately written up for having violated the attendance policy and subsequently terminated. The employee sued for wrongful termination, harassment, discrimination and failure to accommodate. After a jury trial, she was awarded \$3.5 million in compensatory damages and \$15 million in punitive damages against the employer, and \$500,000 in compensatory damages and \$3,000 in punitive damages against the supervisor. Both parties filed appeals with respect to the noneconomic damage awards. The California Court of Appeal concluded that the jury's noneconomic damages awards were "hopelessly ambiguous," and therefore reduced the award to roughly \$1.9 million in compensatory damages. The California Supreme Court subsequently agreed with the Court of Appeal with respect to the fact that the punitive damages awarded exceeded the federal constitutional limit. It held that under the circumstances of the case, the amount of compensatory damages set the ceiling for the punitive damages. Accordingly, the punitive damage award was reduced to \$1.9 million. Given the sizeable nature of the damages awards in this case, employers are cautioned to review their policies to ensure that they are in compliance with the law and do not work to the disadvantage of any group of employees.

Attorneys

David Ian Dalby

Service Areas

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Contact for more information: You Hinshaw attorney.

California Supreme Court Finds Attorney-Client Privilege Bars Disclosure of Opinion Letter

A group of warehouse managers sued their employer, alleging that they were misclassified as exempt employees, and thus deprived of overtime pay pursuant to state law. Attorneys in a law firm retained by the employer years earlier to provide legal advice on this issue had previously issued a letter to the employer setting forth their opinions concerning the classification of employees. During the course of discovery in the managers' lawsuit, the managers sought to obtain the letter. The employer objected on the basis that the document was protected from disclosure by the attorney-client privilege. The California Supreme Court determined that because the employer had requested its attorneys to perform an investigation into the employees and their job duties, that communication, including the resulting opinion letter, was privileged in its entirety. The Court further noted that even where the letter contained unprivileged factual material, which could be discoverable by other means, that did not compel the letter's disclosure. This case highlights the value in the attorney-client privilege, and demonstrates that information provided to attorneys in confidence should be protected from disclosure to opposing parties, even where those communications are made in the legal advice and counseling context.

Employees Protected From Discrimination As to Genetic Information

The Genetic Information Nondiscrimination Act (GINA), which became effective on November 21, 2009, provides further protections for employees against discrimination than previously existed. The statute prohibits employers from, among other things, using genetic information to make decisions regarding hiring, promotion, terms or conditions, privileges of employment, compensation or termination; using genetic information as a basis for limiting, segregating or classifying an employee or member, or depriving that employee or member of employment opportunities; or requesting, requiring or purchasing genetic information of the individual or family member. Genetic information encompasses many things, but generally involves information about an individual's or his or her family's genetic background, or the manifestation of a disease or disorder in an individual's family history. It does not include information about the sex or age of any individual. To the extent that an employer has any genetic information about its employees, GINA requires the employer to maintain that information in a separate file and to treat it as a confidential medical record. GINA applies to private companies with 15 or more employees; employment agencies; labor organizations; some public sector employers; and training programs. Employers are required to post new United States Equal Employment Opportunity Commission (EEOC) posters which contain references to GINA.

Contact for more information: [Amy K. Jensen](#)

Mistaken Overtime Claim Can Provide the Basis for a Claim for Wrongful Termination in Violation of Public Policy

A carburetor assembler was informed by the employees he supervised that they were missing overtime pay. The assembler then advised the employer's payroll administrator that both he and other employees were not paid for overtime worked because the time clock that they used was wrong. Ultimately, overtime pay was approved for the assembler and his employees based upon his statements. It was later determined that the employees could not have worked the overtime that they claimed given the electronic scans at the security gate entrance. Management confronted the assembler, who stated that he was confused and offered to return the additional overtime pay. The employer refused to accept his offer and terminated him for falsifying time records. At trial, the employer prevailed on a motion for nonsuit on the claim for wrongful termination, reasoning that an employer could properly terminate an employee who made an unjustified claim for wages. The California Court of Appeal, however, found that a jury was entitled to decide whether the employee's overtime claim was made in good faith, and whether he was terminated for making the claim or for falsifying the time records. The court ultimately determined that an employee's good faith but mistaken complaint of a statutory violation is protected from employer retaliation and that the duty to pay overtime wages is a public policy, and that violation of it provides a basis for a claim of wrongful termination. The critical inquiry is not whether a complaining employee is correct about a violation, but whether he or she has a good faith reasonable basis for believing that a violation occurred. Before terminating or disciplining an employee for an incorrect, or apparently insubordinate, assertion of a statutory violation, safety concern or other alleged workplace impropriety, employers must cautiously evaluate whether the employee's claim was made in good faith.



Contact for more information: [David Ian Dalby](#)

California Supreme Court Unanimously Holds Attorneys' Fees May Be Denied in Low-Recovery FEHA Cases

A Los Angeles police officer sued his employer alleging discrimination and harassment based on perceived mental disability. He further claimed that the employer had retaliated against him for his having filed numerous prior administrative complaints and lawsuits. The jury ruled against the officer on all of his claims except for one retaliation claim. As to it, the officer was awarded \$1,500 in economic damages and \$10,000 for emotional distress. The officer's attorney sought \$871,000 in attorneys' fees, but the trial court denied that request in its entirety. On appeal, the California Court of Appeal reversed the denial of the fee request, holding that the statutory authority relied upon by the trial court (California Code of Civil Procedure Section 1033) was inapplicable in a case filed pursuant to the Fair Employment and Housing Act (FEHA). The California Supreme Court reversed, thereby denying the attorneys' fees request. The Supreme Court found that under Section 1033, the trial court has the discretion to deny attorneys fees to a plaintiff who prevails on a FEHA claim but recovers an amount that could have been recovered in a limited civil case. Because the recovery in this case was only \$16,500, it arguably could have been filed in the limited jurisdiction courts. Ultimately, trial courts are charged with considering the policies and objectives of FEHA and its attorneys' fees provisions when determining whether or not to apply Section 1033. Here, the Supreme Court determined that the trial court exercised its discretion to reach the decision on this issue. This case highlights the danger in seeking grossly inflated and disproportionate attorneys' fees in FEHA cases.

Contact for more information: [Sean N. Pon](#)

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