
2011 Employment Law Updates

A review of the year's most important employment lawsuits



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Lawsuit Categories

- n Wage and Hour
- n Discrimination
- n Harassment
- n Privacy

Wage and Hour

Pineda v. Bank of America, N.A. (2010) 50 Cal.4th 1389, California Supreme Court.

- n Plaintiff, having ultimately been paid his wages, sued for statutory penalties for delay in payment. The Supreme Court held that Labor Code section 203, establishes a three-year statute of limitations for such wage payment penalty claims (even though the normal limitations period for statutory penalties is one year).
- n Such penalties, however, are not recoverable in a Business and Professions Code section 17200 action as they do not represent restitution.

Wage and Hour

Brinker Restaurant Corp. v. Superior Court, pending California Supreme Court case no. S166350.

- n Plaintiffs brought a class action alleging that they were denied mandated rest periods and meal breaks. At issue is whether an employer is required to enforce meal breaks and rest periods or only to make them available.
- n Whether an employer who prevails on meal and rest break claims is entitled to attorney's fees under Labor Code section 218.5's two-way fee shifting provision.

Wage and Hour

Lamps Plus Overtime Cases, May 10, 2011, 211 S.O.S 2416, Second District.

- n Employers must provide employees with breaks but need not ensure employees take breaks. Common claims did not predominate issue of whether employee of whether employer required employees to work off-the-clock where almost as many employees reported that they were not required to work off-the-clock.

Wage and Hour

Sullivan v. Oracle Corp., pending California Supreme Court case no. S170577.

- n The Ninth Circuit has asked the California Supreme Court to opine whether the California Labor Code applies to overtime worked in California for a California-based employer by out-of-state workers.
- n And, if so, whether Business and Professions Code section 17200 applies to such a claim or to a claim for a California-based employer's failure to pay federally mandated overtime for time that an employee worked out-of-state.

Discrimination

- n **Reid v. Google, Inc. (2010) 50 Cal.4th 512, California Supreme Court.**
- n Plaintiff, a senior executive at Google, claimed that he was discriminated against because of his age in a notoriously "young" corporate culture. To support his case, he relied on various comments by superiors and coworkers that his ideas were "obsolete" or "too old to matter," that he was not a "cultural fit" and that he was an "old man" and an "old fuddy-duddy."
- n Google argued that none of these remarks were made in connection with any employment decision and should be deemed irrelevant "stray remarks."
- n The Supreme Court rejected any categorical "stray remarks" doctrine that would necessarily "deem irrelevant any remarks made by non-decision making coworkers or remarks made by decision making supervisors outside of the decisional process." Rather, such "stray remarks" may and should be considered in the context of the evidence as a whole to determine if the plaintiff can make out a prima facie case of discriminatory animus.

Discrimination

Wal-Mart v. Dukes, pending United States Supreme Court case no. 10-277.

- n Six female plaintiffs alleging a culture of gender discrimination at Wal-Mart filed a class action on behalf of 1.5 million female employees.
- n At issue is whether claims for monetary relief can be certified under Federal Rules of Civil Procedure, rule 23(b)(2), which by its terms is limited to injunctive and declaratory relief, and whether certification of the large class was consistent with governing standards.

Discrimination

Chavez v. City of Los Angeles (2010) 47 Cal.4th 970, California Supreme Court.

- n Plaintiff brought a FEHA claim recovering \$11,500. The trial court denied his request for \$870,000 in attorney's fees under Code of Civil Procedure section 1033, subdivision (a), because the case could have been, but was not, brought in a limited jurisdiction court.
- n The Supreme Court held that section 1033, subdivision (a), applies to FEHA claims as much as to any other and that the trial court was within its discretion in denying costs, including attorney's fees.
- n Award of expert witness fees to prevailing defendant under Code of Civil Procedure section 998 applies as much in FEHA claims as in any other, but trial court must consider whether amount should be adjusted in light of plaintiff's resources.

Discrimination

Wills v. Superior Court of Orange County, April 13, 2011, Fourth Appellate District.

- n In this case the Court ruled in favor of the employer, defendant Superior Court of the State of California, County of Orange (“OC Court”), in affirmed summary judgment in a disability discrimination claim by plaintiff Linda Wills.
- n In so doing, the Appellate Court ruled that an employer may discipline an employee for engaging in threats or violence against coworkers, even when that behavior is caused by the employee’s disability.

Harassment

E.E.O.C. v. Prospect Airport Services, Inc. (9th Cir. 2010) 621 F.3d 991, Ninth Circuit.

- n The E.E.O.C. sued an employer based on a male employee's allegation that he was sexually harassed by a female co-worker and thus suffered from a hostile work environment.
- n The Ninth Circuit reversed a summary judgment for the employer, emphasizing that Title VII of the Civil Rights Act entitles men, like women, to protection from an abusive work environment.

Privacy

City of Ontario v. Quon (2010) 560 U.S. ___, 130 S.Ct. 2619, United States Supreme Court.

- n An employer (a police department) gave employees pagers on which text messages could be sent. It later reviewed the messages - many of which were personal and sexually explicit - to determine why monthly use was so high.
- n The Supreme Court held that, even assuming that the employees had a reasonable expectation of privacy in the messages, review of those messages did not violate the Fourth Amendment. The government employer's search was motivated by a legitimate work-related purpose and was not excessive in scope, and therefore was reasonable under existing precedent.

Privacy

Holmes v. Petrovich Development (2011) 191 Cal.App.4th 1047, Third District.

- n An employee suing her employer argued that attorney-client communications sent from her work computer were privileged.
- n The Court of Appeal disagreed, holding that the employee in effect knowingly disclosed the communication to a third party by using her work computer.
- n Following City of Ontario v. Quon (2010) 130 S.Ct. 2619, United States Supreme Court, the court explained that where an employer has a policy that e-mail can be inspected at any time, employees do not have a reasonable expectation of privacy in their company email account.

Thank You!

- n The audio and slides will be available for download on Monday. You will be receiving an email with instructions.
- n Please join us for next month's webinar:

“Basics of Anti-Harassment Training”

Thursday, June 30th

12pm – 1pm

- n For questions or more information, please email us at info@cpehr.com