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By Anthony J. Oncidi

California Employment Law Blog

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Summary Judgment Was Properly Granted To Employer In Whistleblower Case

Vatalaro v. County of Sacramento, 2022 WL 1775708 (Cal. Ct. App. 2022)

Cynthia J. Vatalaro sued the county for a violation of Cal. Lab. Code § 1102.5, alleging that the county illegally retaliated against her after she reported that she was working below her service classification, which she believed evidenced a violation of the law. The trial court granted summary judgment to the county, which the Court of Appeal affirmed but on different grounds. The appellate court applied the standard recently enunciated in *Lawson v. PPG Architectural Finishes, Inc.*, 12 Cal. 5th 703 (2022) and determined that the employer had succeeded in showing that "the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in activities protected by Section 1102.5." The Court rejected the three-part burden-shifting framework that the parties and the trial court had applied pre-*Lawson*.

Job Applicants Need Not Be Paid For Time/Expenses Associated With Drug Testing

Johnson v. WinCo Foods, LLC, 2022 WL 2112792 (9th Cir. 2022)

Alfred Johnson brought this class action against WinCo, seeking compensation as an "employee" for the time and expense of taking a drug test as a successful applicant for employment. Plaintiffs argued that because the drug tests were administered under the control of the employer, they qualified as "employees" under California law. The district court granted summary judgment in favor of the employer on the ground that plaintiffs were not yet employees when they took the drug test and the control test in California applies to control over the manner of performance of the work itself, not the manner of establishing qualifications to do the work as in this case. The Court also rejected plaintiffs' contract theory on the ground that they were not hired until they established they were qualified for the job by passing the drug test. The Ninth Circuit affirmed the judgment in favor of the employer.

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Employer May Have Willfully Violated FCRA By Not Providing Employees Proper Background Check Notice

Hebert v. Barnes & Noble, Inc., 78 Cal. App. 5th 791 (2022)

The federal Fair Credit Reporting Act ("FCRA") requires an employer to provide a job applicant with a standalone disclosure stating that the employer may obtain the applicant's consumer report when making a hiring decision. In this putative class action, Vicki Hebert alleged that Barnes & Noble willfully violated the FCRA by providing job applicants such as herself with a disclosure that included extraneous language unrelated to the topic of consumer reports. Barnes & Noble argued that the "extraneous information" was included in the disclosure due to an inadvertent drafting error. The trial court granted summary judgment to Barnes & Noble, but in this opinion, the Court of Appeal reversed, holding that a jury could conclude that the violation was willful because at least one of the company's employees was aware of the extraneous information in the disclosure (the manager of employee relations); the company may not have adequately trained its employees on FCRA compliance; and/or the company may not have had a monitoring system in place to ensure compliance with the statute.

Foreign Companies That Allegedly Trafficked Cambodians Did Not Have Sufficient Contacts With US

Ratha v. Phatthana Seafood Co., 35 F.4th 1159 (9th Cir. 2022)

Plaintiffs in this case (Cambodian villagers) alleged they had been trafficked into Thailand and subjected to forced labor at seafood processing factories in violation of the Trafficking Victims Protection Reauthorization Act (18 U.S.C. § 1595) ("TVPRA"). The district court granted defendants' summary judgment motion, which the Ninth Circuit affirmed in this case. The Court of Appeals assumed without deciding that TVPRA may apply extraterritorially, but concluded that the companies in question did not have sufficient minimum contacts with the United States for the statute to apply to them. Moreover, there was no evidence that two Thai companies registered to conduct business in California either knowingly benefitted from the other companies' alleged human trafficking or knew or should have known of the alleged violations of TVPRA. *Compare Owino v. CoreCivic, Inc.*, 2022 WL 1815825 (9th Cir. 2022) (Ninth Circuit affirms district court's order certifying three class actions brought under the Victims of Trafficking and Violence Protection Act of 2000 ("forced labor") and applicable employment law by individuals incarcerated in private immigration detention facilities owned and operated by CoreCivic, a for-profit corporation).

Extended Statute Of Limitations Does Not Apply To Employer Of Felon

Cardenas v. Horizon Senior Living, Inc., 78 Cal. App. 5th 1065 (2022)

The victim of a felony has an extended statute of limitations in which to bring an action for personal injury or wrongful death against the person convicted of that felony pursuant to Cal. Code Civ. Proc. § 340.3 ("Section 340.3"). Mauricio Cardenas (who suffered from dementia) was a resident of Horizon Senior Living. On many occasions, Cardenas left Horizon without the knowledge of the staff; on one such occasion, Cardenas wandered for several miles and was hit by a car and killed. The director of Horizon was convicted of felony elder abuse and manslaughter, and the manager was convicted of felony elder abuse in connection with Cardenas's death. The heirs of Cardenas brought this civil action against Horizon and its director and manager for negligence, willful misconduct, elder abuse and wrongful death. Horizon demurred to the complaint on the ground that it was barred by the two-year statute of limitations applicable to torts. Plaintiffs opposed the demurrer on the ground that Section 340.3 revived the statute of limitations after the felony convictions. The trial court sustained the demurrer and dismissed the case, and the Court of Appeal affirmed, holding that because Horizon had never been convicted of a felony (only its director and manager had), Section 340.3 did not apply and thus the lawsuit was barred by the two-year statute of limitations. The Court further held that plaintiffs have no cause of action based upon Cal. Lab. Code § 2802, which provides indemnity to an employee by an employer and is inapplicable to a third party.

After Nine Years Of Service In The Air Force Employee Is Entitled To Promotion He Might Have Received With His Employer

Belaustegui v. International Longshore & Warehouse Union, 2022 WL 2036385 (9th Cir. 2022)

Leon Belaustegui left his job as an entry-level longshore worker to enlist in the U.S. Air Force. After nine years of active duty in the Air Force, he returned to work as a longshoreman and requested a promotion to the position he claims he likely would have attained if he had not served in the military. When his employer denied the request, he filed suit alleging discrimination under the Uniformed Services Employment and Reemployment Rights Act ("USERRA"). The district court granted the employer's motion for summary judgment, but the Ninth Circuit reversed, holding that hours credits and elevation rights set forth in a collective bargaining agreement qualify as "benefits of employment" protected under USERRA.

Meal/Rest Break Premium Pay Is A "Wage" For Purposes Of Wage Statements And Timely Pay Requirements

Naranjo v. Spectrum Sec. Servs., Inc., 13 Cal. 5th 93 (2022)

Gustavo Naranjo alleged that his employer had not provided an additional hour of pay for each day on which Spectrum failed to provide employees with a legally compliant meal break (i.e., had failed to provide "premium pay" pursuant to Cal. Lab. Code § 226.7). Naranjo further alleged that Spectrum was required to report the premium pay on employees' wage statements (Cal. Lab. Code § 226) and timely provide such premium pay to employees upon their discharge or resignation (Cal. Lab. Code §§ 201, 202 and 203). In this opinion, the California Supreme Court held that missed-break premium pay constitutes wages for purposes of Cal. Lab. Code § 203, so "waiting time penalties are available under that statute if the premium pay is not timely paid." The Court further held that "failure to report premium pay for missed breaks can support monetary liability under section 226 for failure to supply an accurate itemized statement reflecting an employee's gross wages earned, net wages earned, and credit hours worked." Finally, the Court held that the default prejudgment interest rate of 7% was applicable to the meal break claim. *Compare Meza v. Pacific Bell Tel. Co.*, 2022 WL 2186251 (Cal. Ct. App. 2022) (employer did not violate Section 226 by not including rates and hours from prior pay periods underlying an overtime true-up calculation).