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By **Anthony J. Oncidi***

California Employment Law Blog

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$90 Million Judgment Reinstated: Employers Must Relieve Employees Of All Duties During Their Rest Periods

Augustus v. ABM Sec. Servs., Inc., 2016 WL 7407328 (Cal. S. Ct. 2016)

Jennifer Augustus filed this putative class action on behalf of all ABM security guards, alleging that ABM consistently failed to provide uninterrupted rest periods as required by state law. During discovery, ABM acknowledged that it required guards to keep their radios and pagers on, remain vigilant and respond when needs arose, such as escorting tenants to parking lots, notifying building managers of mechanical problems and responding to emergency situations during their breaks. The trial court granted plaintiffs' motion for summary adjudication on their rest period claim on the ground that ABM's policy was to provide guards with rest periods subject to employer control and the obligation to perform certain work-related duties. The trial court subsequently awarded the class approximately $90 million in statutory damages, interest and penalties. The Court of Appeal reversed but, in this opinion, the California Supreme Court reversed the Court of Appeal and held, consistent with the trial court's judgment, that California law prohibits on-duty rest periods. "What [the law] require[s] instead is that employers relinquish any control over how employees spend their break time, and relieve their employees of all duties – including the obligation that an employee remain on call."

* Anthony J. Oncidi is a partner in and the Chair of the Labor and Employment Department of Proskauer Rose LLP in Los Angeles, where he exclusively represents employers and management in all areas of employment and labor law. His telephone number is (310) 284-5690 and his email address is aoncidi@proskauer.com.

Security Guard Class Action Should Not Have Been Decertified

Lubin v. The Wackenhut Corp., 5 Cal. App. 5th 926 (2016)

Nivida Lubin, et al., filed this class action lawsuit against their employer for its alleged failure to provide Lubin and similarly situated employees (private security guards) with off-duty meal and rest breaks and for providing inadequate wage statements. The trial court initially certified a class of all non-exempt security officers employed by Wackenhut in California during the class period. Following the opinions in *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011) and *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012), the trial court granted Wackenhut's motion to decertify the class. The Court of Appeal reversed the decertification order, holding that "the only explanation articulated for providing an on-duty meal period was a staffing decision – a client's preference for continuous coverage," which did not mean that individual issues predominated. The Court further held that the alleged invalidity of the on-duty meal agreements could be evaluated by statistical sampling or inspection of the agreements themselves and that the rest break and wage statement claims also were susceptible to class treatment.

Discrimination Claims Against Media Company Are Not Barred By Anti-SLAPP Statute

Wilson v. Cable News Network, Inc., 2016 WL 7217201 (Cal. Ct. App. 2016)

Stanley Wilson alleged discrimination, retaliation, wrongful termination and defamation against CNN, et al., where he worked as a television producer before his employment was terminated following an audit of his work involving suspected plagiarism. Defendants answered the complaint and then filed a special motion to strike all causes of action pursuant to Cal. Code Civ. Proc. § 425.16 (the "anti-SLAPP" statute) on the ground that all of their staffing decisions (including those involving Wilson) were acts in furtherance of CNN's right of free speech that were "necessarily 'in connection' with a matter of public interest – news stories relating to current events and matters of interest to CNN's news consumers." The trial court granted CNN's anti-SLAPP motion and dismissed the lawsuit, but the Court of Appeal reversed, rejecting the characterization of defendants' allegedly discriminatory and retaliatory conduct as mere "staffing decisions" in furtherance of their free speech rights to determine who shapes the way they present news stories. *See also Armin v. Riverside Community Hosp.*, 5 Cal. App. 5th 810 (2016) (physician's religious discrimination claims against hospital employer were not barred by the anti-SLAPP statute).

Employee Could Proceed With Disability Discrimination And Wrongful Termination Claims

Soria v. Univision Radio Los Angeles, Inc., 5 Cal. App. 5th 570 (2016)

Sofia Soria worked as an on-air radio personality for Univision for approximately 14 years before her employment was terminated for alleged tardiness and lack of preparation for her show. In response to Soria's lawsuit for alleged disability discrimination, Univision argued it had no knowledge of Soria's alleged disability (a

benign tumor) and that it had legitimate, nondiscriminatory reasons to terminate her employment. The trial court granted Univision's motion for summary judgment, but the Court of Appeal reversed, holding that the alleged discrimination was based on an ailment that limited a major life activity (work). The Court further held that despite the employer's assertion that it was not aware of Soria's alleged disability, Soria's testimony that she had orally notified her supervisor of her condition created a disputed issue of fact precluding summary adjudication. Similarly, the Court found triable issues of fact regarding Soria's claims that the employer violated the California Family Rights Act because Soria's statements concerning an alleged need to take time off from work for surgery were sufficient to trigger Univision's obligation to inquire further into the details of Soria's request.

Employee Injured During "Mock Robbery" Was Not Limited To Workers' Compensation Remedy

Lee v. West Kern Water Dist., 5 Cal. App. 5th 606 (2016)

Kathy Lee, an employee of the water district, sued the district and four co-employees for assault and intentional infliction of emotional distress after the co-employees staged a "mock robbery" without Lee's knowledge and one of them (while wearing a mask) confronted her at the cashier's window with a note demanding money and saying he had a gun. The jury awarded Lee $360,000. The trial court granted the defendants' motion for a new trial, but the Court of Appeal reversed the order, holding that Lee was not limited to the exclusive remedy provided by workers' compensation because an exception exists when an employee's injury is caused by a "willful physical assault" as was the case here. *See also Kesner v. Superior Court*, 1 Cal. 5th 1132 (2016) (employers and premises owners have a duty to exercise ordinary care to prevent exposure by employee's household members to asbestos carried by the bodies and clothing of workers who are exposed to asbestos).

On-Duty Meal Periods Were Permissible For Concrete Mixer Drivers

Driscoll v. Graniterock Co., 2016 WL 6994923 (Cal. Ct. App. 2016)

Brian Driscoll, et al., filed a putative class action against their employer, Graniterock, on behalf of 200 current and former concrete mixer drivers for its alleged failure to provide employees with off-duty meal periods and an additional hour of pay for meal periods during which the drivers opted to continue working. The class was certified, and the case was tried without a jury. The trial judge ruled in favor of Graniterock. The Court of Appeal affirmed the judgment, holding that there was "no evidence at trial that any mixer driver was ever denied an off-duty meal period … [and] the evidence showed that any concrete mixer driver who did not sign an On-Duty Meal Period Agreement, or revoked such agreement, was provided one hour of pay as required by law." The Court noted that Graniterock's policies regarding meal periods are particularly appropriate in the context of the ready mix concrete industry because mixer drivers manage a rolling drum of freshly batched concrete at various times throughout their work day.

California Statute Targeting Three Specific Employers Opposed By A Union May Violate Equal Protection

Fowler Packing Co. v. Lanier, 2016 WL 7321371 (9th Cir. 2016)

In 2015, the California legislature passed Assembly Bill 1513 in response to two state appellate court decisions that exposed employers to significant and unexpected minimum wage liability for piece-rate workers. The statute created a "safe harbor" that gave employers an affirmative defense against the new claims so long as the employer made back payments under certain conditions. However, at the behest of the United Farm Workers of America union (the "UFW"), the legislature included specific "carve-outs" from the "safe harbor" for three or four specific employers who were involved in then-pending litigation against the UFW. Those employers (plaintiffs in this case) challenged the statute on the grounds that it violates the Bill of Attainder Clause and the Equal Protection Clause of the United States Constitution. The district court dismissed the employers' complaint, but the United States Court of Appeals for the Ninth Circuit reversed, holding that plaintiffs' claim under the Equal Protection Clause should not have been dismissed because "the only conceivable explanation for AB 1513's carve-outs is that they were necessary to procure the UFW's support in passing that legislation… [and] that justification would not survive even rational basis scrutiny."

Employee's FEHA Retaliation Claim Was Properly Dismissed

Dinslage v. City & County of San Francisco, 5 Cal. App. 5th 368 (2016)

David P. Dinslage is a former employee of the Recreation and Parks Department of the City and County of San Francisco. As a result of a large-scale restructuring of the Department, Dinslage's employment classification was eliminated and he was laid off. Dinslage alleged age discrimination and retaliation, among other things, under the California Fair Employment and Housing Act ("FEHA"). The trial court granted summary judgment in favor of the Department, and the Court of Appeal affirmed. Dinslage's retaliation claim was based on his belief that he suffered retaliation because of his opposition to Department actions that allegedly discriminated against disabled members of the general public. Therefore, the Court held that Dinslage had not engaged in any "protected activity" because his opposition was not directed at an unlawful employment practice.

Employee's Wrongful Termination Claim Was Properly Dismissed, But Other Claims Survive

Goonewardene v. ADP, LLC, 5 Cal. App. 5th 154 (2016)

In her fifth amended complaint, Sharmalene Goonewardene alleged claims against her former employer (ADP) for wrongful termination, violation of the Labor Code, breach of contract, negligent misrepresentation and negligence. The trial court sustained ADP's demurrer to the complaint without further leave to amend, and the Court of Appeal affirmed in part and reversed in part, holding that only the wrongful termination and Labor Code claims were properly dismissed. The Court held that there were not sufficient facts alleged establishing an employment relationship between Goonewardene and ADP (the payroll company used by her employer,

Altour International Inc.) and on that basis affirmed dismissal of the Labor Code and FLSA violation claims. Similarly, ADP was not liable as a matter of law for either discrimination or wrongful termination in violation of public policy because of the absence of an employment relationship. As for the breach of contract claim, the Court of Appeal held that Goonewardene and other Altour employees were third-party beneficiaries of an agreement between Altour and ADP. The Court also held that the negligent misrepresentation and professional negligence claims survived demurrer based on ADP's alleged failure to properly calculate wages owed to Goonewardene.

Employee's Breach Of Contract Claim For Unpaid Stock Options Must Be Retried

Ryan v. Crown Castle NG Networks, Inc., 2016 WL 7217274 (Cal. Ct. App. 2016)

Patrick Ryan sued his former employer for breach of its alleged promise to grant him lucrative stock options as a condition of his employment. When Ryan tried to exercise the option to purchase 25,000 shares 11 months after his resignation, the company's general counsel responded that the attempted exercise was ineffective because he was required to exercise the options within 90 days of his separation from employment and because the options had not "performance-vested" at the time Ryan had left his employment with the company. Ryan sued for breach of contract and also asserted claims for fraud and negligent misrepresentation. Although the jury found in favor of Ryan on his breach of contract claims, it applied an incorrect measure of damages by, among other things, failing to value the options. The Court of Appeal held that the trial court erred by denying Ryan's motion for a new trial and ordered that Ryan be given an opportunity to choose between a new trial on all issues (not just damages) and reinstatement of the original judgment under review.

"Going and Coming" Rule Barred Employer Liability For Accident

Pierson v. Helmerich & Payne Int'l Drilling Co., 4 Cal. App. 5th 608 (2016)

Luis Mooney (an employee of Helmerich & Payne International Drilling ("H&P")) was involved in a traffic accident while returning home from work; Mooney was driving two other employees to a hotel where they were staying during the job. Brent Dale Pierson (the other driver) alleged that Mooney was acting in the course and scope of his employment with H&P at the time of the accident and sought to hold H&P liable for his injuries. The parties filed cross motions to establish whether Mooney was acting within the course and scope of his employment at the time of the accident. The trial court granted H&P's motion for summary judgment, concluding as a matter of law that the going and coming rule applied and, therefore, Mooney's operation of his vehicle at the time of the accident was not within the scope of his employment. The Court of Appeal affirmed, holding that the going and coming rule applied and that none of the exceptions (vehicle use, required vehicle, incidental benefit, special errand, etc.) applied. *See also Khosh v. Staples Constr. Co.*, 4 Cal. App. 5th 712 (2016) (employee of an independent contractor could not recover tort damages for work-related injuries from the contractor's hirer).

The Monetary Value Of Vacation Accrual Need Not Be Included In Wage Statement

Soto v. Motel 6 Operating, L.P., 4 Cal. App. 5th 385 (2016)

Lidia Soto sued her former employer, Motel 6 Operating, L.P., for violation of Labor Code § 226(a) for failing to include the monetary value of accrued vacation pay in its employees' wage statements. Soto sued in her individual capacity and also on behalf of all aggrieved workers under the Private Attorney General Act of 2004 ("PAGA"). The trial court sustained the employer's demurrer without leave to amend, and the Court of Appeal affirmed, holding that Section 226(a) does not require employers to include the monetary value of accrued vacation time in employee wage statements until and unless a payment is due at the time of the termination of the employment relationship – before that point, accrued but unused vacation time is not a *quantifiable* amount of wages.

Lawyers In Putative Class Action Were Properly Disqualified Based Upon Representation Of Another Class

Walker v. Apple, Inc., 4 Cal. App. 5th 1098 (2016)

The trial court disqualified the attorneys for a putative class led by Stacey and Tyler Walker based upon the lawyers' concurrent representation of a certified class in another wage and hour class action (the *Felczer* class) pending against the same employer (Apple). In its disqualification motion, Apple asserted that in order to advance the interests of its clients in the *Walker* case, the lawyers would have to cross-examine one of their own clients from the *Felczer* class in an adverse manner. The Court of Appeal affirmed, holding that the trial court did not err in finding the firm represents the former store manager in the *Felczer* class action and that a disqualifying conflict exists between her interests and the Walkers' interests.

$179,000 Penalty Upheld For Employer's Failure To Maintain Workers' Compensation

Taylor v. Dep't of Industrial Relations, 4 Cal. App. 5th 801 (2016)

Following an inspection, the Division of Labor Standards Enforcement ("DLSE") discovered that Aaron's Automotive ("Taylor") had been in operation since 2007 but had never acquired workers' compensation insurance coverage as required by Labor Code § 3700. The DLSE issued a Penalty Assessment Order, assessing a penalty against Taylor in the amount of $179,329.60. The Court of Appeal rejected Taylor's construction of Labor Code § 3722(b), involving the meaning of being uninsured during the calendar year preceding the determination and concluded that "even if Taylor's statutory interpretation is correct, the penalty assessed by the DLSE in this case would not be invalidated. Nor would the amount of the penalty imposed be any less."

Union Member’s Hostile Work Environment Claim Was Not Preempted By Federal Law

Matson v. UPS, 840 F.3d 1126 (9th Cir. 2016)

Mary Matson, a member of the Teamsters Union, worked as a “combination worker” unloading and sorting packages at UPS’s Boeing Field International hub in Seattle. During her employment, Matson allegedly complained that because of her gender she was subject to unfair and demeaning treatment in the workplace. UPS subsequently fired Matson for “proven dishonesty,” relying upon results of an investigation into whether Matson had falsified delivery records. Matson filed a grievance, and a joint Teamsters/UPS labor panel affirmed her discharge. Matson then filed suit against UPS alleging that her termination was unlawfully motivated by race and gender discrimination and in retaliation for her prior complaints; that she was subjected to a gender-based hostile work environment -- a claim largely, but not exclusively, based on the way UPS assigned work; and that UPS had committed various common law torts. UPS removed the state court action to federal court and moved for summary judgment, which was granted on the merits, except with respect to Matson’s gender discrimination, retaliation and gender-based hostile work-environment claim, which UPS asserted was preempted by Section 301 of the Labor Management Relations Act (“LMRA”) on the grounds that the question of whether UPS assigned work based on factors other than gender required interpretation of the collective bargaining agreement (the “CBA”). The district court rejected UPS’s LMRA preemption argument, and the case proceeded to trial.

The jury sided with UPS on Matson’s claims that her termination was motivated by gender and retaliation, but it awarded Matson $500,000 on the hostile work-environment claim. After UPS’s post-trial motion, the district court ordered a new trial based on LMRA preemption of that part of the hostile environment claim related to the assignment of work – i.e., accepting the argument that it had previously rejected. UPS won the second trial in which the jury considered whether there was proof of a hostile work environment based on conduct other than the assignment of work, and Matson appealed. In this opinion, the United States Court of Appeals for the Ninth Circuit reversed the judgment, holding that because Matson’s hostile work-environment claim could be resolved without interpretation of the CBA, the LMRA did not preempt the claim. The Court of Appeals remanded for reconsideration of the amount of damages owed to Matson. *See also Gonzales v. CarMax Auto Superstores, LLC*, 840 F.3d 644 (9th Cir. 2016) (amount in controversy requirement was satisfied where the potential cost of complying with injunctive relief was considered along with plaintiff’s claim for damages).

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Contact

Anthony J. Oncidi, Partner
+1.310.284.5690 – aoncidi@proskauer.com

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