



Court Rejects Class Action by Store Assistant Managers Bringing Overtime Claim

A California court of appeal refused to allow a class action against a retail chain brought by assistant store managers claiming failure to pay overtime. In *Sav-On Drug Stores, Inc. v. Superior Court*, former assistant managers alleged they were improperly classified as exempt from overtime, and sued on behalf of 1,400 such managers working at approximately 300 drug stores. The court ruled that the different circumstances under which the stores operated created significant variations in the job duties of each manager and the time spent on each task so that class action treatment was inappropriate. In general, for class action treatment, common questions of law or fact must predominate, and a class action may not be maintained if each member's right to recover depends on separate facts. This case may signal a judicial turn against the recent explosion of class action overtime claims. However, even this court cautioned that a class action may be appropriate where the job tasks and time spent by each employee are so uniform as to warrant class treatment.

Layoff of Employee on Family Leave Allowed

An employer may terminate an employee as part of a reduction in force while she is on maternity leave under the California Family Rights Act ("CFRA"), a California court of appeal ruled. In *Tomlinson v. Qualcomm Inc.*, the employee was granted a maternity leave that guaranteed her the same or equivalent position upon her return. However, during the leave, she was notified that she was discharged as part of a reduction in force. The court upheld state regulations providing that an employee on leave has no greater rights to reinstatement than if the employee had been continuously employed during the leave, and that if the employee is laid off during the leave, the employer's responsibility to reinstate the employee ceases at the time of termination. While this is a helpful ruling for employers, caution is still warranted in terminating an employee while on pregnancy or family leave.

No Public Policy Violation where Hospital Fired Nurse for Refusal to Drop Lawsuit Against Patient

In *Jersey v. John Muir Medical Center*, a patient, while hospitalized for a head trauma, allegedly assaulted a nurse. The nurse then sued the patient for assault. The employer instructed the nurse to dismiss the suit because bringing a claim against a patient (whose conduct may have been affected by his head injuries) was contrary to the hospital's mission. The nurse refused to dismiss her suit, and was discharged for insubordination. The nurse thereafter sued the hospital for wrongful discharge in violation of public policy. In dismissing the lawsuit, the court found no public policy prohibiting an employer from insisting that employees not sue customers, clients or patients. While a general rule prohibiting such employee suits may be lawful, there may be occasions where an employee lawsuit could be protected activity, thus

making it important to conduct a case-by-case evaluation of the appropriate discipline.

U.S. Supreme Court Refuses to Review Ruling on Necessity of Multiple Accommodation Attempts

The U.S. Supreme Court let stand a Ninth Circuit Court of Appeals decision that a California hospital committed disability discrimination by not exploring other possible accommodations after one failed attempt. In *Humphrey v. Memorial Hospitals Association*, a medical transcriber with obsessive-compulsive disorder was repeatedly absent and late to work. She engaged in obsessive rituals in the morning, such as repeatedly washing her hair, which took up to three hours. As an accommodation, she was afforded a flexible work schedule. However, she continued to have attendance problems. Ultimately, the employer terminated her employment. According to the Ninth Circuit, the hospital should have considered the employee's requests to work at home, or to take a leave of absence before terminating her. While this case seems to be "overprotective," it nevertheless underscores the importance of fully exploring all possible reasonable accommodations with a disabled employee.