



FENWICK & WEST LLP

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Courts Less Likely To Halt Picketing Activities Under New Law

Call the cops before calling the court. A California court recently applied a new California Labor Code regulation restricting a court's ability to halt a union's picketing activities on private property. As a result, a court can only stop picketing arising from a labor dispute if the police are unable or unwilling to provide adequate protection. After a union came onto a supermarket property shouting threatening slogans at customers and employees, following them to their cars, and writing down their license plate numbers, the supermarket called the police. However, the police did not take a report or intervene. Since the supermarket did not allege why the police could not help, a California court declined to enforce an injunction against picketing on its worksite. California employers are, therefore, well advised to contact local law enforcement personnel first, and record the result, before seeking assistance through the court.

Whether Effeminate Or Masculine, The Law Provides Protection

Two recent cases demonstrate that males and females need not to conform to sexual stereotypes to receive protection from the law. Rather, an employee can have a claim against a same-sex harasser if the harassment is based on the employee's failure to conform to gender based stereotypes.

In *Jones v. Pacific Rail Servs.*, a male co-worker made repeated statements about a male employee's effeminate appearance. When the employer did not respond to the employee's complaints, the court permitted the employee to move forward with his sexual harassment claim.

In a related case, a California jury recently awarded \$500,000 in damages to a former Oakland police recruit

who claimed that his trainers retaliated him against after filing a sexual orientation bias complaint. According to the plaintiff, the Oakland Police Academy evaluated him more critically than other recruits and required him to complete more difficult test scenarios. After the plaintiff complained, his trainers became increasingly hostile. Both of these cases illustrate the necessity of treating same-sex harassment charges in a serious and responsive manner.

Long-Term Relationship With Supervisor Prevents Finding Of Sexual Harassment

When intimate relationships go sour, employees should not necessarily expect sympathy from the courts. In *Mosher v. Dollar Tree Stores*, an employee and supervisor engaged in a several week intimate relationship. When the relationship spoiled, the employee alleged sexual harassment, and claimed she feared her supervisor and had sex with him in order to keep her position. The court found plaintiff's failure to alert her employer while the relationship was ongoing, and unwillingness to change her living relationship with the supervisor inconsistent with her claim and upheld summary judgment for the employer.

Bush Mandate To Keep Northwest Airlines Flying

Keep on working! President Bush's block of the impending mechanics strike at Northwest Airlines represents the weakened political state of organized labor. His actions may also send a message to employees of American Airlines, Delta Airlines, and United Airlines. Each company has lingering contract disputes with certain groups of employees. Bush's actions may also signal a pro-management regime for the next four years in Washington, D.C.

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