



Theft Of Trade Secrets May Trigger Automatic Jail Time

The California Supreme Court recently held that a conviction for theft of trade secrets exceeding \$50,000 mandates a minimum 90-day jail sentence. In *People v. Farell*, an employee printed out, and took from the employer, trade secrets related to computer chips. The employee admitted that the value of the trade secrets exceeded \$100,000. The California Economic Crime Law of 1992 requires that a defendant, convicted of certain theft offenses, must be sentenced to at least 90 days in county jail before becoming eligible for probation. The California Supreme Court ruled that the theft of trade secrets exceeding \$50,000 in value is covered by this law, and that as a result the sentence must include jail time.

Employee Terminated For Discussing Bonus With Coworkers States A Claim For Wrongful Termination In Violation of Public Policy

A California Court of Appeal ruled that an employee has a fundamental right to discuss pay with coworkers, and may sue for tort damages if terminated for having such conversations. In *Grant-Burton v. Covenant Care, Inc.*, an employee participated in a discussion about company bonuses with several employees. The company terminated her, purportedly on the basis of statements she made during this discussion. In ruling that the employee could sue for wrongful discharge in violation of public policy, the court concluded that California Labor Code section 232 and the federal National Labor Relations Act establish fundamental public policies protecting employees from being terminated for discussing their wages. Employers should be mindful that employees are permitted to discuss their wages with each other and that policies prohibiting such conversations are unlawful.

Employee's Refusal To Salute The Flag Does Not Support A Claim For Religious Discrimination

While the Ninth Circuit Court of Appeals reconsiders its controversial decision that school children may not be compelled to recite the pledge of allegiance, the same court held in *Lawson v. State of Washington* that the state may require a police cadet to salute the flag and take an oath to support the U.S. Constitution. The cadet was a Jehovah's Witness who argued that saluting the flag and taking the oath conflicted with his religious beliefs. He told the academy supervisor that he was resigning unless he could be relieved of these obligations. The supervisor responded that he did not know of anything the cadet could do as an alternative. The cadet sued for constructive discharge arising out of religious discrimination. In dismissing the lawsuit, the Ninth Circuit held that because the cadet resigned, and since he could not establish discriminatory treatment (indeed, all the cadets were treated the same), plaintiff failed to establish a claim for constructive discharge based on religious discrimination. Employers should be aware, however, that in religious discrimination cases, the more difficult issue is not whether an

employer policy is discriminatory, but whether the religious obligation can be reasonably accommodated.

Labor Commissioner May Recover Attorneys' Fees For Representing Employees in Wage Appeals

An employer may be required to pay attorneys' fees for unsuccessfully appealing an order to pay wages, even if the employee is represented for free by the California Labor Commissioner. In *Lolley v. Campbell*, the employer appealed a Labor Commissioner order to pay a former employee overtime wages. In court, the employee was represented without charge by an attorney from the Labor Commissioner's office. The court upheld the overtime pay award but ruled that the Labor Commissioner was not entitled to reimbursement for attorneys' fees because the state represented the employee at no cost to him. The California Supreme Court, however, ruled that the employer was required to reimburse the state for the value of the attorneys' time even though the plaintiff received such services without charge. Employers should therefore consider the plaintiff's potential attorneys' fees in evaluating whether to appeal adverse Labor Commissioner rulings.

Termination Based On Employer's Reasonable And Honest Belief That Employee Misused FMLA Leave Is Permissible

A federal district court recently held that an employer does not violate the FMLA for discharging an employee based upon a reasonable and honest belief that the employee was misusing FMLA leave, even if the employer's conclusion is mistaken. In *Connel v. Hallmark Cards, Inc.*, plaintiff informed her employer that she was taking FMLA leave due to severe medical symptoms. Later, a manager spotted her frolicking at the county fair. However, when questioned about this, plaintiff denied attending the fair. The employer terminated plaintiff for dishonesty. A federal district court in Kansas concluded that the managers' reasonable good faith belief justified the termination even if plaintiff could ultimately prove the employer's belief was mistaken, and dismissed the suit.

Update: Judge Reduces \$30 Million Punitive Damages Award Against Ralph's Grocery

We previously reported a \$30 million punitive damages award in a sexual harassment case against Ralph's Grocery. The court recently reduced the award to \$8.25 million and ordered a new trial on punitive damages unless the plaintiffs accepted the reduced award. This will be the third trial in the case.

Update: California Supreme Court To Review Sav-On Class Action Ruling

We also previously reported on the Court of Appeal decision rejecting class action treatment for overtime claims brought on behalf of store managers. The California Supreme Court has decided to review the decision.

