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Weekly Employment Brief

December 9, 2002

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California Employers No Longer Must Reduce Labor Commissioner Awards to Zero To Avoid Paying Employees' Attorney's Fees On Appeal

In *Smith v. Rae-Venter Law Group,* the California Supreme Court interpreted the Labor Code provision governing wage claims whereby a party that is "unsuccessful" in its appeal of a California Labor Commissioner award to the court system must pay the other party's costs and reasonable attorney's fees. While the facts and procedure of this case are too convoluted for a tidy summary, the rule announced by the Court is clear: a party is "unsuccessful in the appeal" unless the judgment in the trial court is more favorable to the appealing party than was the Labor Commissioner award from which the appeal was taken. In other words, an employer that appeals is successful if the administrative award is reduced by any amount, and an employee who appeals is successful if the award is increased. Although this interpretation may appear commonsensical, it is a significant departure from how California courts had applied the Labor Code. Under the former rule, employers were unsuccessful in their appeals unless the trial court reduced the Labor Commissioner award to zero, and employees were unsuccessful only if the trial court reduced the award to zero. The Supreme Court determined that the prior rule encouraged marginal employee appeals and discouraged meritorious employer appeals. The Court's holding is significant for employers, who now face less risk from appeals of Labor Commissioner claims.

Sudden End Of Relationship With Major Client Constitutes Unforeseeable Business Circumstances Under WARN Act

A Federal appellate court recently has held that a company did not violate the WARN Act when its major client suddenly refused to pay for a shipment, causing the company to discontinue production on that day. In *Watson v. Michigan Industrial Holdings Inc. (MIHI)*, MIHI supplied automobile parts to Dana Corporation on a month-to-month basis. Although MIHI was aware Dana was preparing another company to produce parts for it, Dana had reassured MIHI that it would continue to use MIHI through 1996. In early 1996, however, Dana refused without notice to pay for a shipment, which forced MIHI to stop production and close its doors immediately. A group of employees sued MIHI under the WARN Act, claiming that due to the company's precarious financial condition, it should have realized it was going to close the plant eventually, and thus provided the required 60-day advance notice of plant closure. The Court of Appeals for the Sixth Circuit (covering Kentucky, Michigan, Ohio, and Tennessee) rejected this argument, however, holding that the company should not have to give WARN notice when there is only a possibility that the business may fail. That MIHI expected in its "commercially reasonable judgment" to continue its relationship with Dana well into 1996 qualified it for the WARN exception. Although the unforeseeable business circumstances exception to the WARN Act is a difficult test to meet, as this case shows, it is possible to prove in extreme situations.

Federal Damages Cap Does Not Apply To State Law Claims

A Federal appellate court has held that the federal cap on damages under the Civil Rights Act of 1991 does not apply to a related state law claim. In *Gagliardo v. Connaught Laboratories, Inc.,* a customer service representative, Jane Gagliardo, sued under the ADA and the Pennsylvania Human Relations Act alleging her employer terminated her in part due to her multiple sclerosis. A jury found the employer liable for $2 million in compensatory damages and $500,000 in punitive damages. Because the federal Civil Rights Act limits damages under the ADA to $300,000 and punitive damages were not available under the Pennsylvania law, the district court assigned Gagliardo's punitive award to the ADA claim and reduced it to $300,000. The court then apportioned all of the compensatory damages to Gagliardo's state law claim, thus avoiding the damages cap. The Third Circuit Court of Appeals (encompassing Pennsylvania, New Jersey, Delaware and the U.S. Virgin Islands) agreed with this approach, holding that the federal cap should not be applied in a way that limits available state law remedies. California employers should note that the Ninth Circuit has issued a similar ruling in an earlier case.

Signing Workers' Compensation General Release Sufficient To Release Company From Harassment Claim

A California appeals court has held that when an employee signs a workers' compensation release agreement that releases "all claims and causes of action" against an employer, this includes a waiver of claims in a civil lawsuit against the employer of which the employer had not yet been given notice. In *Kohler v. Interstate Brands Corp.*, Renae Kohler filed a workers' compensation claim alleging harassment by a fellow employee. Several months later, Kohler filed a civil suit alleging harassment in violation of FEHA. Shortly thereafter, but before Interstate became aware of the FEHA suit, Kohler agreed to settle her workers' compensation claim for $4,000 and signed a release agreement. The agreement specified that Kohler sought settlement for an employment-related injury to her "psyche/stress," and included a waiver of "all claims and causes of action, whether now known or ascertained, or which may hereafter arise or develop as a result of said injury." The court held that when only the employee knows what claims are being pursued, the burden is on the employee to expressly except her lawsuit from the broad language of the release or she must otherwise conclusively demonstrate that the parties did not intend the release to encompass all of her claims. If the employer is aware of specific claims, however, it should identify those claims in a general release.

DID YOU KNOW???

An employer can actually increase the range of potential claims an employee can bring by having a policy against harassment which is more expansive than legal definitions of harassment.