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February 2014

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JUDICIAL

California

California Court of Appeal Confirms That Sexual Harassment Need Not Be Motivated by Sexual Desire

In *Taylor v. Nabors Drilling USA*, a California Court of Appeal confirmed that sexual harassment need not be motivated by sexual desire.

Plaintiff Max Taylor (“Taylor”) filed a complaint against his former employer, Nabors Drilling USA, L.P. (“Nabors”), alleging a series of violations of the Fair Employment and Housing Act. Among other things, Taylor alleged that during his employment he was repeatedly harassed as a result of his perceived sexual orientation.

At trial, Taylor presented evidence that he was the victim of a series of vulgar, offensive acts and statements by his coworkers. The jury ruled in Taylor’s favor on his sexual harassment claim. In response, Nabors requested that the trial court reverse the verdict based, in part, on the fact that the evidence presented to the jury was insufficient to show that Taylor was harassed *because of* his sex and/or sexual orientation. The trial court denied the request, and the appellate court affirmed the ruling.

The appellate court, noting recent statutory and case law establishing that sexual desire need not be present in order for a plaintiff to succeed on a sexual harassment claim, was unmoved by Nabors’ argument that the harassing acts were merely his co-workers’ means of making fun of him.

California Court of Appeal Extends Substantial Motivating Factor Standard, Reiterates Need For Thorough Investigation of Employee Complaints

In *Mendoza v. Western Medical Center*, a California appellate court held that a common law wrongful termination claim must be analyzed pursuant to the substantial motivating factor standard, as set forth last year in *Harris v. City of Santa Monica*.

Plaintiff Romeo Mendoza (“Mendoza”) was employed as a nurse at Western Medical Center (“Western Medical”). In October 2010, after twenty years of excellent performance, Mendoza reported to management that his supervisor had been sexually harassing him since August 2010. Both Mendoza and his supervisor are gay, and Mendoza claimed that the supervisor had repeatedly subjected him to explicit sexual comments, unwanted touching, and lewd gestures.

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Western Medical's investigation of Mendoza's complaint was limited to a simultaneous interview of Mendoza and his supervisor by a manager without human resources expertise. The supervisor claimed that Mendoza initiated the inappropriate activities, and that he had only reluctantly engaged in the conduct. Western Medical did not interview any additional witnesses. Based on its investigation, Western Medical fired both Mendoza and the supervisor on the ground that they had engaged in consensual but inappropriate and unprofessional conduct.

Among other things, Mendoza sued Western Medical for wrongful termination in violation of public policy. Mendoza claimed that Western Medical's investigation was woefully inadequate, and that his discharge was merely Western Medical's attempt to rid itself of everyone involved in the incident, regardless of culpability. Mendoza alleged that he had done nothing wrong, and that his discharge was based purely on his harassment complaint.

At trial, the jury was instructed to find for Mendoza if it found that his report of sexual harassment was *the* motivating factor in the decision to discharge him. However, in response to a request for clarification by the jury, the trial judge advised the jury that it should find for Mendoza if the sexual harassment report was "a motivating factor." The jury found in favor of Mendoza. Western Medical appealed, arguing that although the original jury instruction was correct, the judge's explanation of the instruction was incorrect and thus amounted to prejudicial error.

The appellate court ruled that the judge's instruction was improper in light of the California Supreme Court's 2013 ruling in *Harris v. City of Santa Monica*, wherein the Court held that the proper analysis of a Fair Employment and Housing Act ("FEHA") is whether discrimination was "a *substantial* motivating factor," not merely "a motivating factor." The appellate court in the instant case held that since Mendoza's common law wrongful termination claim arose through an alleged violation of the FEHA, logic dictated that the causation analysis should be the same. Accordingly, the appellate court remanded the case to the trial court for a rehearing of the facts under the proper standard.

Notably, the appellate court was critical of Western Medical's handling of Mendoza's complaint. Rebuking Western Medical's response, the court noted that "employers should conduct a thorough investigation and make a good faith decision based on the results of the investigation. Hopefully, this opinion will disabuse employers of the notion that liability (or a jury trial) can be avoided by simply firing every employee involved in the dispute."

Mendoza is a reminder that employers should perform in-depth and meaningful investigations of employee complaints, as investigative findings not only constitute the grounds for employment decisions, but are also the foundation for defending those decisions at trial.

This is Pettit Kohn Ingrassia & Lutz PC's monthly employment update publication. If you would like more information regarding our firm, please contact Tom Ingrassia, Jennifer Lutz, Jenna Leyton-Jones, Christine Mueller, Heather Stone, Ryan Nell or Lauren Bates at (858) 755-8500; or Jennifer Weidinger or Tristan Mullis at (310) 649-5772.

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