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EMPLOYMENT LAW UPDATE

Relationship-Driven Results *January 2014*

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JUDICIAL

Federal

Ninth Circuit Upholds Sizeable Attorneys' Fee Award
Despite Plaintiff's Modest Victory

In *Muniz v. United Parcel Service, Inc.* ("UPS"), the Ninth Circuit, applying California law, upheld the district court's award of attorneys' fees to the prevailing plaintiff in a case based on alleged violations of the Fair Employment and Housing Act ("FEHA"). The sole issue on appeal was whether the district court abused its discretion in awarding the plaintiff $697,971.80 in attorneys' fees where the jury awarded her only $27,280 in damages.

Kim Muniz ("Muniz") filed claims for gender discrimination, age discrimination and retaliation based on a single adverse employment action, her demotion. The claims for age discrimination and retaliation were resolved in favor of UPS through summary judgment. The case proceeded to trial on the issue of gender discrimination. The jury found in favor of Muniz and awarded her $27,280 ($9,900 for lost earnings, $7,300 for past medical expenses, and $9,900 for past non-economic loss).

The district court found Muniz to be the prevailing party and awarded her $697,971.80 in attorneys' fees utilizing the lodestar (or "touchstone") method, wherein each attorney's reasonable hourly rate is determined and then multiplied by the number of hours reasonably spent in achieving the victory. The resulting figure is then adjusted up or down depending on the amount of time the attorneys spent pursuing unsuccessful claims, as well as other factors.

UPS did not challenge the jury verdict and conceded that the district court's lodestar calculation was within its discretion. Rather, UPS argued that Muniz had achieved limited success on her claims yet submitted an inflated fee request, which, according to UPS, required a significant reduction in light of Muniz's failure to succeed on the age discrimination and retaliation claims. However, the parties could not segregate the actual number of hours Muniz's attorneys could reasonably have spent on the unsuccessful claims. As such, the Ninth Circuit was not convinced that the district court erred in declining to further reduce the attorneys' fee award based on Muniz's pursuit of ultimately unsuccessful claims. The Ninth Circuit noted that Muniz's complaint requested damages in excess of $25,000 and

the jury awarded her $27,280-a result that was "not insignificant." While the court acknowledged the disparity between the damages and attorneys' fees awarded, it declined to reduce the disparity.

This case highlights the significant impact that the FEHA may have on employers who choose to litigate cases through trial. Employers should be cognizant of the fact that even a modest victory for the plaintiff in terms of a damages award may result in a disproportionately sizeable attorneys' fee award, which is unlikely to be disturbed on appeal.

California

California Appellate Court Reaffirms Recent Class Certification Trend in Two Wage and Hour Cases

2013 was marked by a series of appellate decisions holding that where putative class members are subjected to common wage policies or practices, class certification may be warranted. In the two most recent cases, *Jones v. Farmers Insurance Exchange* and *Martinez v. Joe's Crab Shack Holdings*, the California Court of Appeal reiterated that the focus for class certification is the commonality of the challenged practice, not the alleged or potential damages sustained by each class member.

In *Jones v. Farmers Insurance Exchange*, Kwesi Jones ("Jones") served as a claim representative for the automobile insurance unit of Farmers Insurance Exchange ("Farmers"). Jones and other claim representatives spent the majority of their workdays in the field, visiting auto body shops and meeting with claimants to assess vehicle damage. Farmers' policy was not to pay claim representatives for necessary but brief tasks (*e.g.*, syncing their computers), although it did pay them for more substantive administrative work before and after their first and last site visits of the day.

Jones alleged that he and the putative class of claim adjusters were compelled to engage in substantial amounts of unpaid work (beyond the trivial tasks) every day in order to prepare for the first site visit of the day. This off-the-clock work allegedly totaled over four hours per week. Farmers contended that there was no uniform policy to deny wages to claim representatives. Before trial, Farmers defeated class certification on the ground that class claims did not predominate because each claim representative had different work patterns and, accordingly, different damages.

The appellate court reversed, holding that class certification was warranted because the allegations pertained to a class-wide practice, even if the practice affected individual employees differently. Since all of the claim representatives worked under the same directives concerning paid and unpaid work, the validity of the practice was a question best resolved in a class action. The extent to which each claim representative had been injured by the practice would be determined during the damages phase of trial.

In *Martinez v. Joe's Crab Shack Holdings*, a group of current and former employees of Joe's Crab Shack's California restaurants ("Plaintiffs") filed suit

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against the restaurants' holding companies ("Defendants"), alleging that they had been misclassified as exempt employees and were therefore entitled to overtime pay. Plaintiffs moved to certify a class consisting of "all persons employed by Defendants in California as a salaried restaurant employee."

In support of their motion, Plaintiffs submitted declarations from 22 putative class members. The declarations indicated that putative potential class members were generally told that they would be working between 50 and 55 hours per week, but often worked more than 70 hours per week. During this time, they were regularly required to perform "utility" functions, which included filling in as cooks, servers, bussers, hosts, stockers, bartenders, and kitchen staff. As a result, each employee estimated that between 50 and 95 percent of his/her time was spent performing nonexempt, hourly tasks. In response, Defendants submitted 27 declarations, primarily from general managers who had opted out of the putative class. The declarants uniformly described their duties as managerial in nature.

The trial court denied class certification, holding that Plaintiffs failed to establish that: 1) their claims were typical of the class; 2) they could adequately represent the class; 3) common questions of law or fact predominated; and 4) a class action was the superior means of resolving the litigation. This decision was based on Plaintiffs' alleged inability to estimate time spent on exempt versus nonexempt tasks, and on the trial court's determination that significant individual disputed issues of fact remained with regard to the amount of time spent by individual class members on particular tasks.

The appellate court reversed, relying heavily, as did the *Jones* court, on the California Supreme Court's decision in *Brinker Restaurant Corporation v. Superior Court*. According to the appellate court, the trial court erred in denying class certification by unduly focusing on individual restaurant managers' overtime damages rather than the impact of Defendants' policies and practices on managerial workers. The appellate court thus remanded the matter, instructing the trial court to re-focus its analysis "on the policies and practices of the employer and the effect those policies and practices have on the putative class."

These cases reaffirm the recent judicial trend of granting class certification where the putative class was subjected to a common unlawful policy or practice, even where an assessment of damages would require an individualized analysis. Employers should therefore review their wage and hour policies and practices to ensure that they are legally compliant.

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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