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Employment Case Summaries

Since 2010, concurrent with her legal career, Ms. Callahan has served as the Chief Executive Officer and General Counsel for a family-owned manufacturing company. In that capacity, Ms. Callahan has been the person responsible for setting, announcing and enforcing company policies; handling hiring, firing, review, reprimand and employment termination; and overseeing workplace safety and employee conduct. As a mediator, she has been called upon numerous times to mediate employer-employee disputes. The following are a few of the more notable cases she has mediated:

Outside Sales Rep / Improper Classification Dispute. Plaintiff worked for a well-known brand as an independent contractor / sales representative. When plaintiff voluntarily terminated his relationship to go to work for a competitor, a dispute arose concerning whether commissions were owed for shipped sales and backorder sales. Over a two to three month period, plaintiff and defendant negotiated and ultimately reached agreement on an amount to be paid to plaintiff in exchange for a complete release of all claims against the employer and its related entities. After this settlement was consummated, plaintiff sued for damages for pay, wages and penalties allegedly due for improper classification as an independent contractor. Plaintiff's claim was that despite having voluntarily signed the release and accepted the money paid to settle the dispute, the release was unenforceable under Labor Code Section 206.5; that he could still file suit as a class action representative for improper classification, seeking damages for wage and hour violations, plus attorney's fees.

"Shared Employee / Joint Employer" Liability Dispute. Plaintiff was one of many employees of a building service, maintenance and supply company ("BSMSC"). BSMSC contracted with a large retail operation ("Big Co.") to provide both light housekeeping and heavy duty janitors, as well as cleaning supplies and building maintenance and repair for a monthly fee of \$X. Plaintiff sued Big Co. alleging that one of Big Co.'s employees had sexually stalked and harassed her on a repeated basis, and that "everyone" – including management personnel at BSMSC and Big Co. – knew about it. Plaintiff sued for harassment, discrimination and retaliation on the theory that she was Big Co.'s employee on a "shared employee / joint employer" theory. This mediation centered around this issue on which there have been a number of recent court decisions.

FEHA Attorney's Fees Award Dispute. Plaintiff was a bus operator. After sustaining industrial injuries, plaintiff was released to work with modified duties. The MTA engaged in an interactive process in an effort to find an open position for which plaintiff was qualified and not medically precluded. No such positions were available, so plaintiff was released. Plaintiff sued for disability discrimination, failure to provide reasonable accommodations and retaliation. The matter was tried to a jury, who found for plaintiff on the first three causes of action and awarded damages of about \$450,000. Plaintiff's counsel then filed a motion for attorney's fees under FEHA claiming actual fees equal to about \$900,000, multiplied by a "multiplier" of 2 based on complexity of the issues, risk in pursuing a contingency case, loss of other business, delay in receiving payment and the result obtained for a total award of approximately \$1.6 million. This is the dispute that went to mediation.

Retaliatory Termination / Successor-Entity Liability. Plaintiff worked for "ABC Company" for ten years. Due to the 2008 financial crisis, ABC Company fell on hard times and by 2009 was unable to meet its basic obligations (e.g., rent, utilities, payroll). "Giant Corp." purchased substantially all of ABC Company's assets and assumed responsibility for paying the bulk of its liabilities owed to secured and unsecured creditors. Plaintiff applied but did not get hired to work at Giant Corp. and Giant Corp. did not assume and pay a small liability ABC Company had on its books as a liability owed to plaintiff. Plaintiff filed suit against Giant Corp. on the theory that it had successor entity liability for ABC Company's alleged Labor Code violations. In this regard, plaintiff complained that the reason Giant Corp. did not hire him was because the owners of ABC Company had recommended against it because he had complained about their disposal methods, which he said violated EPA and OSHA standards.

Race and Gender Discrimination / Hostile Workplace v. Honest Mistake / Mismatch. Plaintiff was a single mother who moved across country to California for a "fresh start." She was also African American. Defendant employer was a very large company with hundreds of locations. Plaintiff was hired to fill a mid-management position in Southern California. Her supervisor was also a new hire, and was an older, Caucasian male. Problems arose during the first week that both were on the job and a litany of workplace problems ensued involving the plaintiff and her supervisor. At some point in time, plaintiff was demoted and then quit. She then sued for damages resulting from alleged discrimination and promotion / tolerance of a hostile workplace environment.

Age Discrimination v. Plant Consolidation / Downsizing. Plaintiff was a foreman responsible for overseeing and directing all outgoing shipments at a metal working plant. He had been with the company for over 25 years when the company was acquired by a very large U.S. conglomerate. Shortly after the acquisition, the plant where plaintiff worked was closed and the operations were consolidated with another plant already owned by the conglomerate. After consolidation, there was a progression of "downsizing" layoffs. Plaintiff was one of the "Old Co" employees who lost his job. Plaintiff sued for wrongful termination and age discrimination.

Wrongful Termination for Taking FMLA Leave v. Termination for Cause. Plaintiff was a licensed respiratory therapist. Defendant was a post-acute care provider with care facilities across the U.S. specializing in care for the elderly for which respiratory treatments are key. Plaintiff worked for defendant for four years, during which time she requested and was granted several inter-company transfers. Shortly after her last transfer, plaintiff requested FMLA leave so that she could take care of her ailing father. Prior to requesting FMLA leave, plaintiff had had absenteeism and late-to-work problems and had been counseled and warned on several occasions with formal write-ups that were put in her personnel file. Within days of returning to work after the FMLA leave, plaintiff was given a final warning in response to her being late to work on the second day of work. Plaintiff then had two additional absences, and was fired. Five months later, plaintiff filed suit for wrongful termination.

Wrongful Termination for Discrimination Based on Disability (ADHD) v. Misconduct Justifying Termination and Denial of Benefits. Plaintiff worked for municipal agency for over 20 years. At the time of his termination, plaintiff was an inspector and was responsible for inspecting 30 to 40 industrial locations with respect to their wastewater discharge. After a “Skelly Hearing,” plaintiff was terminated for not performing all of his required inspection tasks, lying about the time spent doing various tasks, lying on his timecard entries, and running personal errands on company time and using the agency vehicle. Plaintiff sued for wrongful termination alleging that it was a well-known fact that he had ADHD and that his problems all started when his workstation was moved from a quiet building to a more highly populated building, which resulted in him requesting (and being granted) permission to work from his truck “in the field.” Defendant countered that plaintiff was not terminated for working in this truck, but for not doing his work, and that “accommodation” does not include allowing plaintiff to use agency vehicles to run personal errands while on the job or using the agency laptop to surf the internet and watch movies.

Workplace “Distress” for Failure to Accommodate Medical Condition (MS) v. Termination for Negative Performance after Making Requested Accommodations. Plaintiff sued for damages for wrongful termination and alleged workplace “distress” for failure to accommodate her medical condition (MS). Defendant claimed that it had no notice / knowledge of any medical condition until after plaintiff’s supervisor gave her a negative performance review; that once defendant became aware, it made all requested accommodations and still plaintiff’s performance was sub-par and she had a high incidence of absenteeism.