

California Supreme Court's Employment Law Cases *A Year in Review*

By Kenneth J. Rose

DURING THE PAST YEAR, THE CALIFORNIA Supreme Court continued to review pivotal issues arising under our state's comprehensive employment laws. The court's employment-related decisions addressed:

- Whether California courts should follow the federal courts' "stray remarks doctrine" in employment discrimination lawsuits (*Reid v. Google*)
- Whether evidence of personnel actions can support harassment claims brought under California's Fair Employment and Housing Act [FEHA] (*Roby v. McKesson*)
- What factors determine if punitive damages awarded is constitutionally excessive (*Roby v. McKesson*)
- Whether California's kin care leave law applies to an employer's paid sick leave policies that provide for an uncapped number of compensated days off (*McCarther v. Pacific Telesis*)
- What standard of judicial review applies to an arbitrator's decision on an employee's anti-discrimination claim under the FEHA that is arbitrated pursuant to a mandatory employment arbitration agreement and whether such agreement can restrict an employee from seeking administrative remedies for FEHA violations (*Pearson Dental Supplies v. Superior Ct.*)

The following is a summary of relevant employment law cases:

***Reid v. Google, Inc.*, SC S158965 (8/5/10)**

In *Reid v. Google, Inc.*, an age discrimination case brought under FEHA, the employment law issue before the Supreme Court was whether California courts should follow the federal courts in adopting the "stray remarks doctrine" in employment discrimination lawsuits. Under this doctrine, statements of non decision-makers, as well as statements by decision-makers which are unrelated to the challenged employment decision, are deemed "stray" remarks that are irrelevant to the question of discriminatory motive and insufficient to avoid summary judgment.

The employer had been granted summary judgment in the trial court, in large part, due to the court's exclusion of a variety of age-related comments deemed "stray remarks." On appeal, however, the Court of Appeal rejected the notion that the "stray remarks" doctrine should operate to categorically exclude these remarks, and instead considered the comments

in combination with all of the other evidence advanced by the plaintiff of discriminatory animus.

The Supreme Court affirmed, rejecting a rigid application of the "stray remarks" doctrine to discrimination cases. The court reasoned that a categorical exclusion of "stray remarks" resulted in courts impermissibly "weighing" evidence at the summary judgment stage, rendering otherwise relevant evidence inadmissible.

***Roby v. McKesson*, 47 Cal. 4th 686 (2009)**

In *Roby v. McKesson Corporation*, a plaintiff's wrongful discharge, harassment and discrimination suit against her former employer and supervisor, the Supreme Court decided two questions: (1) whether evidence of personnel actions can support harassment claims brought under the FEHA, and (2) whether the amount of punitive damages awarded was constitutionally excessive.

As to the first issue, the Supreme Court held that although the FEHA treats discrimination and harassment claims as distinct, there is no basis for necessarily excluding evidence of biased personnel management actions in assessing the harassment claim. The court explained that discrimination refers to bias in the exercise of official actions on behalf of the employer, and harassment refers to bias that is expressed or communicated through interpersonal relations in the workplace.

It stated, however, that although discrimination and harassment are separate wrongs, they are sometimes closely interrelated, and even overlapping, particularly with regard to proof. "[S]ome official employment actions done in furtherance of a supervisor's managerial role can also have a secondary effect of communicating a hostile message. This occurs when the actions establish a widespread pattern of bias."

As to the second issue, the court held that under the circumstances of the instant case, the amount of punitive damages awarded should not exceed the amount of compensatory damages (i.e., \$1,905,000). The jury had awarded Roby more than \$15 million in punitive damages. The appellate court reduced the punitive damages to \$2 million.

In assessing the proper limit of the punitive damages award, the California Supreme Court looked to the U.S.

Supreme Court's decision in *State Farm Mut. Auto. Ins. Co. v. Campbell* (2003), 538 U.S. 408 as a guide. In *State Farm*, the U.S. Supreme Court held that the due process clause of the Fourteenth Amendment to the United States Constitution places constraints on state court awards of punitive damages.

Based on *State Farm*, the court concluded that a one-to-one ratio between compensatory and punitive damages is the federal constitutional limit in this case. The court stated that because it found "no indication of a corporate purpose to cause injury to Roby," but rather that McKesson was merely guilty of "managerial malfeasance," the employer's conduct was at the low end of the range of wrongdoing. The court also based its decision on the high compensatory damages award, warranting a lower ratio because of the actual damages' deterrence of similar conduct.

McCarther v. Pacific Telesis, 48 Cal.4th 104 (2010)

In *McCarther v. Pacific Telesis*, the Supreme Court resolved whether California Labor Code section 233 applies to an employer's paid sick leave policies that provide for an uncapped number of compensated days off. Labor Code section 233 is a leave law known as "kin care." It allows employees to use 1/2 of their annual accrued sick leave entitlement to attend to the illness of a child, parent, spouse or domestic partner. The statute defines "sick leave" as "accrued increments of compensated leave."

The court held that California's kin care statute applies only to traditional sick leave policies where an employee accrues a measurable/banked amount of sick leave over the course of a year, but does not apply to paid sick leave policies that provide for an uncapped number of compensated days

off. The court explained that, otherwise, implementing kin care obligations would be unmanageable for employers and contrary to the Legislature's intent.

Pearson Dental Supplies v. Superior Ct., SC S167169 (4/26/10)

The issues reviewed by the Supreme Court in *Pearson Dental Supplies v. Superior Court* were: (1) What standard of judicial review applies to an arbitrator's decision on an employee's anti-discrimination claim under the FEHA that is arbitrated pursuant to a mandatory employment arbitration agreement and (2) Can such a mandatory arbitration agreement restrict an employee from seeking administrative remedies for FEHA violations?

The court ruled that: clear error of law will serve as a basis for vacating an arbitrator's award where the error deprives an employee of a hearing on the merits of their FEHA claims or other unwaivable statutory claims; arbitration agreements may lawfully preclude employees from pursuing administrative adjudication of their state law claims; and in FEHA cases, the Supreme Court's prior holding in *Armendariz v. Foundation Health Psychcare Services, Inc.*, (2000) 24 Cal.4th 83 requires that arbitrators state reasons for their written decisions in sufficient detail to provide a meaningful basis for judicial review and that mere written conclusions are not enough.

In so ruling, the court acknowledged that, generally speaking, a court is not permitted to vacate an arbitration award when the award is based on errors of law. The court explained, however, that the scope of judicial review is somewhat greater in the case of a mandatory employment



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arbitration agreement that encompasses an employee's unwaivable statutory rights including a hearing on the merits of his or her claim. The arbitrator's error of law involved applying the statute of limitations to bar the claim, without considering whether unlawful discrimination actually occurred.

With respect to the issue of contractual restrictions on an employee's access to administrative agency proceedings/remedies, the court held that, while it may be unconscionable under California law to prevent an employee from submitting claims to administrative agencies, such as the California Fair Employment and Housing Commission or Labor Commissioner, state law is preempted when applied to an arbitration agreement covered by the Federal Arbitration Act.

Lastly, in regard to the requirement under *Armendariz* that arbitration decisions in FEHA cases be written in a sufficient manner to permit judicial review, the court found that the arbitrator's decision was non-compliant because it concluded that employee had not complied with the statute of limitations requirement of the agreement, without providing the reasoning for arriving at that conclusion.

Pending Cases

The following employment law cases and issues are pending decision by the Supreme Court:

***Sonic-Calabasas A, Inc. v. Moreno*, 174 Cal. App. 4th 546 (2009), 174475/B204902**

(1) Can a mandatory employment arbitration agreement be enforced prior to the conclusion of an administrative proceeding conducted by the Labor Commissioner concerning

an employee's statutory wage claim? (2) Was the Labor Commissioner's jurisdiction over an employee's statutory wage claim divested by the Federal Arbitration Act?

***Harris v. City of Santa Monica*, 181 Cal. App. 4th 1094 (2010), S181004/B199571**

Does the "mixed-motive" defense apply to employment discrimination claims under FEHA?

***Brinker Restaurant Corp. v. Superior Court*, 165 Cal. App.4th 25 (2008), S166350/D049331**

What is the proper interpretation of California's statutes and regulations governing an employer's duty to provide meal and rest breaks to hourly workers.

***Harris v. Superior Court*, S156555**

Do claims adjusters employed by insurance companies fall within the administrative exemption to the requirement that employees are entitled to overtime compensation?

Rulings in these pending cases could come before the close of 2010 or early in 2011. ↗

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