

WHAT'S INSIDE

UNPAID COMPENSATION

- 6 California labor law only covers wages due on termination date, judge finds
Crosby v. Wells Fargo Bank (C.D. Cal.)

INDEPENDENT CONTRACTORS

- 7 U.S. court clears FedEx Ground drivers to pursue wage, benefit claims
Alexander v. FedEx Ground Package Sys. (9th Cir.)

SEXUAL HARASSMENT

- 8 California Supreme Court says Domino's not 'employer' in harassment suit
Patterson v. Domino's Pizza (Cal.)

RACE DISCRIMINATION

- 9 United justified in denying managerial position, judge says
Bonillas v. United Airlines (N.D. Cal.)

FRANCHISEES

- 10 7-Eleven franchisees can proceed with FLSA claims
Naik v. 7-Eleven (D.N.J.)

SOCIAL MEDIA

- 11 Personal gripe or public concern: When does an employee's private blog cross the line?
Munroe v. Cent. Bucks Sch. Dist. (E.D. Pa.)

COMMENTARY

- 15 Additional supply chain disclosures by U.S. public companies proposed

COMMENTARY

Uncertain fate of 9th Circuit's decision that FAAAA doesn't preempt break law

Richard Rahm and Kai-Ching Cha of Littler Mendelson PC discuss a July appellate decision that a federal transportation law does not preempt California labor laws and examine how the ruling differs from an earlier U.S. Supreme Court opinion.

SEE PAGE 3

GENDER DISCRIMINATION

Wisconsin women's sex bias suit against Wal-Mart tossed

Four female current and former Wal-Mart employees failed to show that pay and promotion differences between male and female workers at the retailer's Wisconsin-area locations were based on discriminating policies, a federal judge in the state has ruled.

CONTINUED ON PAGE 20



REUTERS/Carlos Barria

41561574



Westlaw Journal Employment

Published since May 1986

Publisher: Mary Ellen Fox

Executive Editor: Donna M. Higgins

Managing Editor: Tricia Gorman
Tricia.Gorman@thomsonreuters.com

Managing Desk Editor: Robert W. McSherry

Senior Desk Editor: Jennifer McCreary

Desk Editor: Sydney Pendleton

Graphic Designers: Nancy A. Dubin
Ramona Hunter

Westlaw Journal Employment

(ISSN 2155-594X) is published biweekly by Thomson Reuters.

Thomson Reuters

175 Strafford Avenue, Suite 140

Wayne, PA 19087

877-595-0449

Fax: 800-220-1640

www.westlaw.com

Customer service: 800-328-4880

For more information, or to subscribe, please call 800-328-9352 or visit west.thomson.com.

For the latest news from Westlaw Journals, visit our blog at <http://blog.thomsonreuters.com/westlawjournals>.

Reproduction Authorization

Authorization to photocopy items for internal or personal use, or the internal or personal use by specific clients, is granted by Thomson Reuters for libraries or other users registered with the Copyright Clearance Center (CCC) for a fee to be paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, MA 01923; 978-750-8400; www.copyright.com.

How to Find Documents on Westlaw

The Westlaw number of any opinion or trial filing is listed at the bottom of each article available. The numbers are configured like this: 2014 WL 000000. Sign in to Westlaw and on the "Welcome to Westlaw" page, type the Westlaw number into the box at the top left that says "Find this document by citation" and click on "Go."



TABLE OF CONTENTS

Gender Discrimination: *Ladik v. Wal-Mart Stores*

Wisconsin women's sex bias suit against Wal-Mart tossed (W.D. Wis.) 1

Commentary: By Richard H. Rahm, Esq., and Kai-Ching Cha, Esq., Littler Mendelson PC

Uncertain fate of 9th Circuit's decision that FAAAA doesn't preempt break law 3

Unpaid Compensation: *Crosby v. Wells Fargo Bank*

California labor law only covers wages due on termination date, judge finds (C.D. Cal.) 6

Independent Contractors: *Alexander v. FedEx Ground Package Sys.*

U.S. court clears FedEx Ground drivers to pursue wage, benefit claims (9th Cir.) 7

Sexual Harassment: *Patterson v. Domino's Pizza*

California Supreme Court says Domino's not 'employer' in harassment suit (Cal.) 8

Race Discrimination: *Bonillas v. United Airlines*

United justified in denying managerial position, judge says (N.D. Cal.) 9

Franchisees: *Naik v. 7-Eleven*

7-Eleven franchisees can proceed with FLSA claims (D.N.J.) 10

Social Media: *Munroe v. Cent. Bucks Sch. Dist.*

Personal gripe or public concern: When does an employee's private blog cross the line? (E.D. Pa.) 11

Duty of Care: *R.T. Vanderbilt Co. v. Galliher*

Delaware high court orders new asbestos trial over hearsay testimony (Del.) 12

Asbestos Exposure: *Bootenhoff v. Hormel Foods Corp.*

Oklahoma federal judge grants judgment for International Paper in asbestos suit (W.D. Okla.) 13

Attorney Advertising: *Dwyer v. Cappell*

New Jersey lawyer wins challenge to advertising regulation change (3d Cir.) 14

Commentary: By Michael R. Littenberg, Esq., Farzad F. Damania, Esq., and Andrea Matos, Esq., Schulte Roth & Zabel

Additional supply chain disclosures by U.S. public companies proposed 15

News in Brief 17

Labor and Public Employment News 18

Recently Filed Complaints from Westlaw Court Wire 21

Case and Document Index 23

Uncertain fate of 9th Circuit's decision that FAAAA doesn't preempt break law

By Richard H. Rahm, Esq., and Kai-Ching Cha, Esq.
Little Mendelson PC

For several years, motor carriers have defended themselves, mostly successfully, against California's meal and rest break laws by using the Federal Aviation Administration Authorization Act of 1994, which preempts state laws "related to a price, route, or service of any motor carrier."

Neither the FAAAA, nor its air carrier equivalent, the Airline Deregulation Act,¹ however, defines "related to," and how far this phrase extends to preempt state laws has often been disputed. Federal preemption is clearest if the state statute specifically references a carrier's prices, routes or services.²

In "borderline" cases, however, where a state law does not refer to a carrier's prices, routes or services, as with California's break laws, or other laws of "general application," the 9th U.S. Circuit Court of Appeals has long held the test for preemption is whether the state law "binds the carrier to a particular price, route or service."³

Last April the U.S. Supreme Court, in *Northwest Inc. v. Ginsberg*, overturned the 9th Circuit's reliance on its "borderline" test, holding that the key to preemption of any state law is its "effect" on prices, routes or services — not whether the law is one of general application.⁴

Nevertheless, in its recent decision in *Dilts v. Penske Logistics*,⁵ the 9th Circuit again applied the test and methodology it applied in *Northwest* when it concluded the FAAAA does not preempt California's meal and rest break laws. The *Dilts* decision could have far-reaching effects on all trucking companies operating in California. Given the apparent conflict between *Northwest* and *Dilts*, and that *Dilts* appears to be at odds with the reasoning of about a dozen district court cases, the future of the decision is uncertain.

rules, and regulations," so as to "leave such decisions, where federally unregulated, to the competitive marketplace."⁷

Expressly excluded from FAAAA preemption is state enactment of motor vehicle safety regulations, such as highway route controls or limitations based on the size and weight of the motor vehicle or the hazardous nature of the cargo. Likewise excluded from FAAAA preemption is a state's ability to set minimum amounts of financial responsibility relating to insurance requirements.⁸

The *Dilts* decision could have far-reaching effects on all trucking companies operating in California.

BACKGROUND OF THE FAAAA

Congress passed the Federal Aviation Administration Authorization Act to preempt state laws that could affect the trucking industry following its deregulation. The FAAAA preempts state laws or regulations or any other provision having the force and effect of law "related to a price, route, or service of any motor carrier."⁶ The purpose of the preemption clause in the FAAAA, similar to the ADA, is to prevent states from enacting, either directly or indirectly, "a patchwork of state service-determining laws,

These express exclusions from FAAAA preemption still leave the scope of the phrase "related to" extremely broad and, as Justice Antonin Scalia noted in a concurrence concerning the same term used in the Employee Retirement Income Security Act, "everything is related to everything else."⁹

In FAAAA and ADA jurisprudence, the U.S. Supreme Court has held the term "related to" means "having a connection with, or reference to" prices, routes and services, regardless of whether that connection is direct or indirect, and that preemption "occurs at least where state laws have a 'significant impact' related to Congress' deregulatory and pre-emption related objectives."¹⁰

Conversely, the FAAAA does not preempt state laws that affect prices, routes and services only in a "tenuous, remote, or peripheral ... manner, such as state laws forbidding gambling."¹¹ But the Supreme Court has never said where, or how, "it would be appropriate to draw the line" in borderline situations.¹²

When a law does not refer directly to rates, routes or services, the 9th Circuit has held "the proper inquiry is whether the provision, directly or indirectly, binds the carrier to a particular price, route or service and thereby



Richard H. Rahm (L) is a shareholder in **Little Mendelson PC** in San Francisco. He has over 20 years of experience counseling and representing employers in wage-and-hour class-action litigation in the transportation, financial and retail industries. **Kai-Ching Cha** (R) is an associate in the firm's San Francisco office, where she counsels employers in a broad range of employment law matters, including wage-and-hour class actions. The authors can be reached at rrahm@littler.com and kcha@littler.com, respectively.

interferes with the competitive market forces within the industry.”¹³

BACKGROUND OF *DILTS*

The *Dilts* plaintiffs represent a certified class of almost 350 delivery drivers and installers of appliances in a class action filed against Penske Logistics in the U.S. District Court for the Southern District of California. The plaintiffs work exclusively in California and said Penske routinely violates the state’s meal and rest break laws. The motor carrier’s delivery drivers and installers typically worked in pairs with one driver and one installer in each truck.

Because California’s meal and rest break laws were not aimed at the motor carrier industry, the District Court used the 9th Circuit’s “borderline” formulation whereby these laws would be preempted only if they would “bind” the motor carrier’s prices, routes or services and “interfere with competitive market forces within the ... industry.”¹⁴

Penske argued the California laws would force its drivers to alter their routes daily while searching out an appropriate place to exit the highway and locating stopping places that safely and lawfully accommodate their vehicles. The District Court found that, “while the laws do not strictly bind [the motor carrier’s] drivers to one particular route,” they would not be able to take routes that did not offer adequate places to stop, and therefore “the laws bind motor carriers to a smaller set of possible routes.”¹⁵

Likewise, the District Court held that “by virtue of simple mathematics,” forcing the drivers to take a number of breaks within a specified period of time would “reduce the amount and level of service Penske can offer its customers without increasing its workforce and investment in equipment,” which would also have a significant impact on prices.¹⁶

Finally, the District Court found that “to allow California to insist exactly when and for exactly how long carriers provide breaks for their employees” would allow other states to do the same, thus creating the forbidden “patchwork of state service-determining laws.”¹⁷

The plaintiffs appealed. Nevertheless, following the District Court’s published decision, numerous district courts followed the *Dilts* analysis and likewise held that California’s meal and rest breaks were preempted either by the FAAAA for motor

carriers or the ADA for air carriers.¹⁸ Building on that analysis, two district courts held California’s minimum wage laws, as applied to piece-rate compensation, were preempted,¹⁹ and a Virginia federal court used the same analysis to hold that the Massachusetts Independent Contract Law, which does not allow motor carriers to use independent contractors as drivers, was preempted.²⁰

NORTHWEST INC. V. GINSBERG

Oral argument on the *Dilts* appeal took place March 3. In April, three months before the 9th Circuit issued its decision in *Dilts*, the U.S. Supreme Court decided *Northwest Inc. v. Ginsberg*,²¹ reversing a 9th Circuit decision that the ADA did *not* preempt the plaintiff’s common-law claim for breach of the implied covenant of good faith and fair dealing because the air carrier terminated plaintiff from its frequent flier program.

Before the 9th Circuit’s decision, numerous district courts followed the *Dilts* trial court’s analysis and likewise held that California’s meal and rest breaks were preempted by the FAAAA or the ADA.

First, the Supreme Court noted that the 9th Circuit had held the plaintiff’s common-law claim to be “too tenuously connected to airline regulation to trigger preemption under the ADA” as it “does not interfere with the [ADA’s] deregulatory mandate” and does not “force the airlines to *adopt or change* their prices, routes or services — the prerequisite for ... preemption.”²² The Supreme Court dismissed this holding as being based on “pre-*Wolens* circuit precedent,” that is, the 9th Circuit had not taken into account the high court’s decision in *American Airlines Inc. v. Wolens* (finding the ADA preempts claims brought under the Illinois Consumer Fraud Act with respect to a frequent flier program).²³

Instead, the Supreme Court held that what is important is “the effect of a state law, regulation, or provision [on prices, routes or services], *not its form*,” as “the ADA’s deregulatory aim can be undermined just as surely by a state common-law rule as it can be by a state statute or regulation.”²⁴ Indeed, the Supreme Court said it “defies logic to think that Congress would disregard real-world consequences and give dispositive

effect to the form of a clear intrusion into a federally regulated industry.”²⁵

THE 9TH CIRCUIT’S DECISION IN *DILTS*

On July 9, the 9th Circuit reversed the District Court in *Dilts*.

In discussing how a court should “draw a line” between laws that are significantly related to prices, routes and services, and those that are only tenuously related, the 9th Circuit concluded that the type of law that can be preempted is one in which “the existence of a price, route or service [was] essential to the law’s operation.”

Otherwise, in “borderline cases” concerning laws of general application, the proper inquiry is “whether the provision, directly or indirectly, *binds* the carrier to a particular price, route or service and thereby interferes with the competitive market forces within the

industry.”²⁶ As such, “generally applicable background regulations that are several steps removed from prices, routes, or services, such as prevailing wage laws or safety regulations, are not preempted, even if employers must factor those provisions into their decisions about the prices that they set, the routes that they use, or the services that they provide.”

In this respect, the 9th Circuit noted that many of the laws the FAAAA expressly excludes from preemption, such as transportation safety and insurance regulations, likewise “increase a motor carrier’s operating costs.” Indeed, while “[n]early every form of state regulation carries some cost,” this alone does not make a state law related to prices, routes or services.²⁷

The holding in *Northwest* notwithstanding, the 9th Circuit concluded that if the law is of general application, it can only be preempted if it “binds” the carrier regarding prices, routes and services.

In its briefing to the 9th Circuit, Penske attempted to provide the court with an alternative test for deciding difficult cases

based on the 7th Circuit's decision in *S.C. Johnson & Son Inc. v. Transport Corporation of America*.²⁸

In that case, the 7th Circuit distinguished between "inputs" that companies must use to provide their services, and "outputs," which are the services themselves. Inputs, such as labor, are often the subject of regulations, such as anti-discrimination laws, and often are not subject to preemption because they operate in the background one or more steps away "from the moment at which the [carrier] offers its customers a service for a particular price."²⁹

The impact of background laws affecting the inputs will, thus, frequently be too attenuated to be preempted. In contrast, California's meal and rest break laws, because they directly affect the delivery of services and the routes used in doing so, would be subject to preemption.

While the *Dilts* court acknowledged the analysis in *S.C. Johnson*, it nonetheless classified California's meal and rest break laws as "generally applicable background regulations," without analyzing the actual "effect" of the law on a motor carrier's prices, routes or services.³⁰

Having already decided laws of general applicability cannot be preempted simply because they "shift[] incentives and make[] it more costly for motor carriers to choose some routes or services relative to others," the 9th Circuit easily concluded that California's meal and rest break laws are not preempted. "They do not set prices, mandate or prohibit certain routes, or tell motor carriers what services they may or may not provide, either directly or indirectly."³¹

Such laws do not create an impermissible "patchwork" of state-specific laws that would defeat Congress' deregulatory objectives because, again, citing to its own circuit precedent, such laws are more analogous to state wage laws, "which may differ from the wage law adopted in neighboring states but nevertheless [may still be] permissible."³²

The court then applied these general principles to Penske's specific arguments, often noting those laws expressly excluded from preemption by the FAAAA would cost the motor carrier more than compliance with California's break laws. Moreover, the break laws do not require a cessation of service, or a change in service, or the frequency of a service; instead, the laws require individual

employees to be given breaks and, if this impacts services, more employees can be hired. "They simply must take drivers' break times into account — just as they must take into account speed limits or weight restrictions, ... which are not preempted by the FAAAA."

Likewise, the court held that forcing drivers to pull over to take breaks was not the sort of route control that Congress sought to preempt, and Penske presented no evidence that such minor deviations limited its drivers to a small set of possible routes. "Indeed, Congress has made clear that even more onerous route restrictions, such as weight limits on particular roads, are not 'related to' routes and therefore are not preempted."

The court also found that such laws do not interfere with the FAAAA's deregulatory objectives where "all motor carriers in California are subject to the same laws" and, thus, "equally subject to the relevant market forces."³³

FUTURE OF DILTS UNCERTAIN

There is much in the 9th Circuit's *Dilts* decision that arguably conflicts with the U.S. Supreme Court's ruling in *Northwest*. Not only did the Supreme Court find the 9th Circuit was wrong in the "borderline" test for preemption, but in holding that a common-law claim was preempted, it stated it is the law's effect on prices, rates and services — not the type of law — that determines preemption. Yet, by continuing to insist that laws of general applicability can only be preempted if they "bind" the carrier to a particular price, route or service, the court appears to believe that no further analysis of the effects of California's meal and rest break laws on motor carriers need be done.

And while the 9th Circuit opined in *Dilts* that the preemption issue was not even "close," about a dozen FAAAA and ADA cases have held differently. Whether Penske will obtain a different decision by petitioning the Supreme Court remains to be seen. Until that time, the future of the *Dilts* decision appears uncertain. **WJ**

NOTES

¹ 49 U.S.C. § 41713(b)(1).

² *Am. Trucking Ass'n v. City of L.A.*, 660 F.3d 384, 396 (9th Cir. 2011).

³ *Id.* at 397.

⁴ 134 S. Ct. 1422 (2014).

⁵ 2014 WL 3291749 (9th Cir. July 9, 2014), superseding opinion, 2014 WL 4401243 (9th Cir. Sept. 8, 2014)

⁶ 49 U.S.C. § 14501(c)(1) (emphasis added).

⁷ *Rowe v. N.H. Motor Transport Ass'n*, 552 U.S. 364, 373 (2008).

⁸ 49 U.S.C. § 14501(c)(2).

⁹ *Cal. Div. of Labor Standards Enforcement v. Dillingham Constr.*, 519 U.S. 316, 335 (1997) (emphasis added).

¹⁰ *Rowe*, 552 U.S. 370.

¹¹ *Id.*

¹² *Id.*

¹³ *Am. Trucking*, 660 F.3d at 397.

¹⁴ *Dilts v. Penske Logistics*, 819 F. Supp. 2d 1109, 1118 (S.D. Cal. 2011).

¹⁵ *Id.* at 1118-19.

¹⁶ *Id.* at 1120.

¹⁷ *Id.* at 1120.

¹⁸ See, e.g., *Rodriguez v. Old Dominion Freight Line Inc.*, 2013 WL 6184432 (C.D. Cal. Nov. 27, 2013) (FAAAA); *Miller v. Southwest Airlines Co.*, 923 F. Supp. 2d 1206 (N.D. Cal. 2013) (ADA).

¹⁹ *Burnham v. Ruan Transp.*, 2013 WL 4564496 (C.D. Cal. Aug. 16, 2013); *Ortega v. J.B. Hunt Transp.*, 2014 WL 2884560 (C.D. Cal. June 3, 2014).

²⁰ *Sanchez v. Lasership Inc.* 937 F. Supp. 2d 730 (E.D. Va. 2013).

²¹ 134 S. Ct. 1422 (2014).

²² *Id.* at 1428 (quoting *Ginsberg v. Northwest Inc.*, 695 F. 3d 873, 881 (9th Cir. 2012) (emphasis added)).

²³ See *American Airlines v. Wolens*, 513 U.S. 219, 226-227 (1995) (reversing an Illinois Supreme Court decision that found frequent flier program claims under the Illinois Consumer Fraud Act were not preempted by the ADA because such programs were not "essential" but merely "peripheral to the operation of an airline," and holding that ADA preemption "does not countenance the Illinois Supreme Court's separation of matters 'essential' from matters unessential to airline operations").

²⁴ *Northwest Inc.*, 134 S. Ct. at 1430 (emphasis added).

²⁵ *Id.* (quoting *Brown v. United Airlines Inc.*, 720 F. 3d 60, 66-67 (1st Cir. 2013)).

²⁶ *Dilts*, 2014 WL 4401243, at *6.

²⁷ *Id.* at *7.

²⁸ 697 F.3d 544 (7th Cir. 2012).

²⁹ *Id.* at 558.

³⁰ *Dilts*, 2014 WL 4401243, at *7.

³¹ *Id.*

³² *Id.* at *8.

³³ *Id.* at *9.

California labor law only covers wages due on termination date, judge finds

A California law requiring employers to pay workers pending wages when firing them only applies to wages earned as of the termination date, a Los Angeles federal judge has ruled.

Crosby v. Wells Fargo Bank NA, No. 14-cv-05594, 2014 WL 4378774 (C.D. Cal. Sept. 3, 2014).

U.S. District Judge Manuel L. Real of the Central District of California partly dismissed Karen Crosby's wage suit Sept. 3, finding her Private Attorneys General Act claims — which concerned commissions she earned before Wells Fargo fired her as a mortgage banker — untimely under the law's one-year limitations period.

PAGA, Cal. Labor Code § 2699, allows workers in California to file enforcement actions against their employers on behalf of their colleagues and the state's labor agency.

Although Judge Real's order addressed only the PAGA claims, Wells Fargo attorney **Thomas Kaufman** of **Sheppard Mullin Richter & Hampton** suggested after the ruling that it would also affect Crosby's other claims for unpaid wages and late-payment penalties.

"[T]he plaintiff contends she should have been paid on loans she worked on that closed more than 30 days after her termination, but the court inferentially holds that Section 201 [of the state's labor code] ... applies only to wages owed at the time of termination," Kaufman said.

Crosby's attorney **Ken Roberts** said it was his policy not to discuss pending litigation.

Crosby, who worked as a private mortgage banker for Wells Fargo from 2008 through February 2013, sued the bank in June, claiming it owed her more than \$50,000 in

commissions she earned working on loans that did not formally close until after she was fired.

According to her complaint, even though a mortgage banker's work is complete once a loan receives approval, Wells Fargo does not pay out any commission it owes until a loan formally "closes."

The company's compensation agreement with Crosby provided that she it would pay her commissions for pending loans only if

question, which she says it did less than a year before she filed suit.

Judge Real sided with the bank.

Section 201 plainly applies only to unpaid wages, the judge found, and not to forms of compensation — like Crosby's pending loan commissions — that potentially do not arise until after a worker is fired.

Since any labor code violation could not as a matter of law have occurred after Crosby's termination, the PAGA claims she filed 16

Karen Crosby claims Wells Fargo owes her more than \$50,000 in commissions she earned working on loans that did not formally close until after the bank fired her.

they closed within 30 days of her termination, according to Judge Real's order.

But Crosby claims the bank delayed processing some loans she worked, pushing their closing dates outside the 30-day window and costing her commissions.

Her suit seeks unpaid wages and late-payment penalties on her own behalf, plus civil penalties under PAGA.

Wells Fargo moved for partial judgment on the pleadings, arguing that Crosby's PAGA claims were untimely under the state's one-year filing window for suits seeking civil penalties.

Crosby countered that the labor code violations occurred not when the bank fired her but when it closed on the loans in

months after her firing were untimely under the one-year limitations period, Judge Real found.

The judge also denied Crosby's request to amend her suit, saying it would be futile. No new pleading can change the fact that she filed her claims too late, he noted. **WJ**

Attorneys:

Plaintiff: Kenneth P. Roberts, Woodland Hills, Calif.

Defendant: Thomas R. Kaufman, Paul Berkowitz and Danielle L. Levine, Sheppard Mullin Richter & Hampton, Los Angeles

Related Court Document:

Order: 2014 WL 4378774

See Document Section B (P. 31) for the order.

U.S. court clears FedEx Ground drivers to pursue wage, benefit claims

(Reuters Legal) – Groups of mostly former FedEx drivers in California and Oregon can move forward with lawsuits alleging they are owed unpaid wages and benefits under state and federal labor laws after a U.S. appeals court said Aug. 27 they were employees, not independent contractors.

Alexander et al. v. FedEx Ground Package System Inc., Nos. 12-17458 and 12-17509, 2014 WL 4211107 (9th Cir. Aug. 27, 2014).

Slayman et al. v. FedEx Ground Package System Inc., Nos. 12-35525 and 12-35559, 2014 WL 4211422 (9th Cir. Aug. 27, 2014).

A three-judge panel of the 9th U.S. Circuit Court of Appeals, sitting in Portland, Ore., reversed a lower court’s ruling, noting that FedEx drivers wear company uniforms, drive company-approved vehicles, and are told where and when to deliver packages.

The appeals court noted that the claims brought by the California and Oregon drivers are among similar cases filed against FedEx in approximately 40 states. Other courts have sided with FedEx, finding that drivers are independent contractors.

FedEx said it will challenge the decision, and will ask the full 9th Circuit to review the panel’s findings.

“We fundamentally disagree with these rulings,” FedEx Ground Senior Vice President and General Counsel Cary Blancett said in a statement.

The FedEx cases highlight how employees and independent contractors are entitled to different rights and protections under a patchwork of federal and state labor laws.

Non-exempt employees are entitled to overtime compensation under the federal Fair Labor Standards Act, protection under state minimum wage laws and time off under the Family and Medical Leave Act, for example, whereas independent contractors are not.



REUTERS/Yuri Gripas

where packages went and assessed drivers’ workloads. Though drivers provided their own vehicles, the agreement used by FedEx mandated that vans have certain dimensions, the FedEx logo and be painted a specific shade of Sherwin-Williams paint known as “FedEx white.”

FedEx said that it is no longer using the operating agreement on which the 9th Circuit’s rulings were based and that it has updated its agreements to reflect state-level legal and regulatory changes, clarifying that FedEx Ground drivers are independent contractors. **WJ**

The appeals court noted that FedEx drivers wear company uniforms, drive company-approved vehicles, and are told where and when to deliver packages.

The California case was brought by about 2,300 workers who were full-time FedEx delivery drivers between 2000 and 2007. The Oregon claims were brought by roughly 360 full-time FedEx delivery drivers between 1999 and 2009. Under the terms of an operating agreement used by FedEx, the drivers were classified as independent contractors, court documents state.

But, FedEx had a “broad right to control the manner in which its drivers perform their work,” the panel wrote in determining the drivers were employees.

The panel highlighted the fact that FedEx assigned the drivers delivery areas, directed

(Reporting by Amanda Becker; Editing by Grant McCool, Alexia Garamfalvi and Bernard Orr)

Attorneys:

Plaintiffs-appellants (Alexander): Beth A. Ross, Leonard Cardner LLP, Oakland, Calif.

Plaintiffs-appellants (Slayman): Scott A. Shorr, Stoll Berne, Portland, Ore.

Defendant-appellee: Jonathan Hacker, O’Melveny & Myers, Washington

Related Court Documents:

Alexander opinion: 2014 WL 4211107

Slayman opinion: 2014 WL 4211422

See Document Section C (P. 34) for the Alexander opinion.

California Supreme Court says Domino's not 'employer' in harassment suit

(Reuters Legal) – California's highest court has determined that Domino's Pizza LLC cannot be held liable as an employer in a sexual harassment lawsuit brought by an employee at one of its franchises.

***Patterson v. Domino's Pizza LLC et al.*, No. S204543, 2014 WL 4236175 (Cal. Aug. 28, 2014).**

While Domino's "vigorously enforced" its "standards and procedures involving pizza-making and delivery, general store operations, and brand image" at its franchises, there was considerable evidence that the franchise owner in the case "made day-to-day decisions involving the hiring, supervision and disciplining his employees," the California Supreme Court wrote in concluding Domino's did not employ the franchise's workers.

The California Supreme Court's 4-3 decision, written by Justice Marvin Baxter and issued Aug. 28, comes as courts and labor agencies try to sort out the franchisor-franchisee relationship for liability purposes.

In a dissent, Justice Kathryn Werdegar said the majority had placed too much emphasis on contract language and overlooked the real-world interactions between Domino's and its franchisee.

Mary-Christine Sungaila, a Snell & Wilmer attorney representing Domino's, said the ruling "makes clear that comprehensive franchise operating systems alone don't establish the type of relationship that can give rise to liability for this sort of conduct."

But, Alan Charles Dell'Ario, the attorney who represented the worker plaintiff in the suit,

said the court also made clear it was leaving open the possibility that franchisors can be held liable as employers in some situations.

"In fact, I think what they did is provide a blueprint for plaintiffs' lawyers so they know what type of evidence to attach" in order to show franchisors are employers, Dell'Ario said in an interview.

Agencies are also considering the best way to assess when franchisors can be considered to be employers of franchise workers.

In late July, National Labor Relations Board General Counsel Richard Griffin announced that McDonald's could be held liable if dozens of alleged National Labor Relations Act violations at its franchises are proven in NLRB administrative hearings.

The NLRB announced in April that it was considering changing its 30-year-old "joint-employer" standard. Griffin's announcement was seen as an indication that changes are underway, though the NLRB has not yet announced what they will be.

Dell'Ario said the California high court ruling likely marks the end of the road for his client, Taylor Patterson, because the Domino's franchise she worked for is bankrupt.

Patterson had been a manager at a Domino's franchise in Southern California. In June 2009, she sued the restaurant, manager Renee Miranda and Domino's corporate



REUTERS/Thomas Peter

alleging that Miranda sexually harassed her by making lewd comments and grabbing her breasts and buttocks.

The Ventura County Superior Court granted Domino's request for summary judgment. The 2nd District Court of Appeals reversed, prompting Domino's appeal to the California Supreme Court. *Patterson v. Domino's Pizza LLC et al.*, 143 Cal. Rptr. 3d 396 (Cal. Ct. App., 2d Dist. June 27, 2012). [WJ](#)

(Reporting by Amanda Becker)

Attorneys:

Plaintiff-appellant: Alan C. Dell'Ario, Napa, Calif.; Alexis S. McKenna, Kelli D. Burritt and Kent F. Lowry Jr., Winer & McKenna, Woodland Hills, Calif.

Defendants-respondents: Elizabeth L. Kolar, Kolar & Associates, Santa Ana, Calif.; Mary-Christine Sungaila, Snell & Wilmer, Costa Mesa, Calif.

Related Court Document:

Opinion: 2014 WL 4236175

United justified in denying managerial position, judge says

A United Airlines employee failed to show that his managers discriminated against him because he is Latino and disabled when they refused to promote him, a California federal judge has ruled.

Bonillas v. United Airlines Inc. et al., No. 12-cv-06574, 2014 WL 4087906 (N.D. Cal., Oakland Div. Aug. 19, 2014).

U.S. District Judge Sandra Brown Armstrong of the Northern District of California granted United's summary judgment motion Aug. 19, finding that the airline had legitimate reasons for not promoting plaintiff Raul Bonillas, who did not offer any admissible evidence to support his claims.

Bonillas, who says he suffers from post-traumatic stress disorder, sued United in December 2012, accusing the carrier of violating state and federal laws, including Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, and the Americans with Disabilities Act, 42 U.S.C. § 12101.

According to Judge Armstrong's order, Bonillas, currently a United mechanic, has held several positions with the company since 1986. He was promoted in 2008 to maintenance supervisor, managing a group of mechanics and ensuring that airplane repairs met compliance standards.

In that role he received several performance evaluations that rated his individual technical abilities highly but gave his managerial and interpersonal skills average or below-average marks, according to the order.

When United merged with Continental Airlines in 2010, managers had to re-apply for their positions, and Bonillas scored poorly, ranking 22nd out of 24 applicants, according to the order.

He had to return to his previous job as a mechanic in October 2011.



REUTERS/STR New

Bonillas sued United, claiming the airline passed him over because he is a Mexican-American and because he suffers from PTSD, which he blames on job stress.

Non-Hispanic workers received more favorable treatment, the suit said.

In her order dismissing the case, Judge Armstrong found all of Bonillas' evidence — which consisted primarily of depositions from his supervisors — inadmissible. But she said that even if the depositions had been admissible, they would not have supported the discrimination claims.

The supervisors' deposition testimony matched Bonillas' performance reviews, praising some of his skills while criticizing him for failing to fulfill his managerial tasks, the judge noted.

United Airlines offered valid reasons for having rejected the plaintiff as a manager, including his allegedly poor leadership, decision-making and conflict-resolution skills, the judge said.

Bonillas also failed to establish that he and his minority colleagues were treated unfairly at work, Judge Armstrong found. Showing that two non-Hispanic employees retained their managerial positions does not prove that they received preferential treatment, she said.

Moreover, the only person who knew that Bonillas suffers from PTSD was not involved in the hiring or promotion process, so his Americans with Disabilities Act claim could not have merit, the judge held.

Finally, Judge Armstrong found, United offered various valid reasons for having rejected Bonillas as a manager.

In addition to his poor performance as an applicant after the United-Continental merger, the airline also cited performance evaluations showing that Bonillas had poor leadership, decision-making and conflict-resolution skills, the judge said. **WJ**

Attorneys:

Plaintiff: Spencer F. Smith, Aimee L. Rosien and Dow W. Patten, Smith Patten, San Francisco

Defendants: Tracy Thompson, Mary L. Guilfoyle, Jennifer R. Cotner and Mani Sheik, Miller Law Group, San Francisco

Related Court Document:

Order: 2014 WL 4087906

7-Eleven franchisees can proceed with FLSA claims

Four 7-Eleven convenience store operators provided enough evidence of the company's control over their businesses to show that they are employees under the Fair Labor Standards Act and are due proper compensation, a New Jersey federal judge has ruled.

Naik et al. v. 7-Eleven Inc., No. 13-4578, 2014 WL 3844792 (D.N.J. Aug. 5, 2014).

U.S. District Judge Renee Bumb of the District of New Jersey denied 7-Eleven's motion to dismiss the franchisees' wage-and-hour claims, finding that the operators are employees and should receive minimum wage, overtime and other benefits.

Although the franchisees make a substantial investment in their stores by paying a franchise fee, in reality they are employees, the judge said, because of the significant control the company has over their processes.

"A review of all of the allegations ... coupled with the [franchise] agreement ... reveals that plaintiffs are integral to defendant's business and that this factor weighs in favor of classifying plaintiffs as employees," Judge Bumb said.

However, the judge did dismiss the plaintiffs' state law discrimination claims, ruling them conclusory and lacking specific factual allegations.

The franchisees filed the suit in July 2013 alleging 7-Eleven violates the Fair Labor Standards Act, 29 U.S.C. § 201; manipulates and ignores the terms of the franchise agreements; and targets certain stores for intimidation and bullying tactics.

The plaintiffs say 7-Eleven intentionally misclassifies its store operators as independent contractors to avoid labor laws requiring certain compensation but treats them as employees.

The complaint further claims 7-Eleven targets stores operated by Asians, Middle Easterners and first-generation Americans with unannounced store visits, fake investigations and derogatory remarks about their nationalities. The company uses these intimidating and bullying tactics to interrupt day-to-day operations and cause the store operators to "live and work in fear," the suit says.



REUTERS/Stringer

Judge Bumb partially denied 7-Eleven's motion to dismiss, upholding the plaintiffs' wage-and-hour claims after concluding that the franchisees are actually employees under the law.

According to the judge's opinion, she determined that the franchisees are employees based on the six factors established in *Martin v. Selker Bros. Inc.*, 949 F.2d 1286, 1293 (3d Cir. 1991):

- The degree of the alleged employer's right to control the manner in which the work is to be performed.
- The alleged employee's opportunity for profit or loss depending upon his managerial skill.
- The alleged employee's investment in equipment or materials required for his work or his employment of helpers.
- Whether the service rendered requires a special skill.

- The degree of permanence of the working relationship.
- Whether the service rendered is an integral part of the alleged employer's business.

The franchisees showed that their relationship with 7-Eleven met three of the factors, Judge Bumb said.

The company controls day-to-day operations, there is a degree of permanence to the working relationship and the franchisees' work is integral to the 7-Eleven business, according to the opinion.

The plaintiffs showed that the company has control over everything from pricing to the volume on the in-store television, processes payroll and has a security system to monitor operator conduct in the stores.

Two factors support 7-Eleven's contention that the franchisees are independent contractors, the judge said. They each pay a franchise fee to open their stores and they are required to have some managerial skills to run the sites.

The question of the franchisees' opportunity to profit or risk a loss from their investment in a store is a neutral factor with arguments on both sides of the employee/independent contractor classification, Judge Bumb said.

Ultimately, the judge said, the plaintiffs have demonstrated that the "economic reality" is that they are dependent upon 7-Eleven, thus creating an employee-employer relationship.

Judge Bumb dismissed the plaintiffs' discrimination and harassment claims under the state's Law Against Discrimination, N.J. Stat. Ann. § 10:5-12. The suit makes no specific allegations about the company's actions toward any individual plaintiffs and does not claim 7-Eleven terminated any of the franchise agreements, she said.

As a result, the judge also dismissed the constructive termination claims, ruling that such a claim cannot exist if the franchise is still operating. [WJ](#)

Attorneys:

Plaintiffs: Gerald A. Marks, Louis D. Tambaro and Evan M. Goldman, Marks & Klein, Red Bank, N.J.

Defendant: Stephen Sussman, Duane Morris LLP, Cherry Hill, N.J.

Related Court Document:

Opinion: 2014 WL 3844792

Personal gripe or public concern: When does an employee's private blog cross the line?

By Sandra Johnson, Senior Attorney Editor, Thomson Reuters

Whether it is playing the role of the provocateur to spark public commentary on the latest social issues, or giving voice to private musings about a topic of personal interest, blogging has become a popular forum for self-expression and public debate.

Munroe v. Central Bucks School District, No. 12-3546, 2014 WL 3700325 (E.D. Pa. July 25, 2014)

But the lure of fingertip, 24-hour access to a public forum can prove problematic, especially when employees' exercise of First Amendment rights touch on concerns in their own workplace.

Although courts have long recognized the freedom of public employees to engage in public debate as a private citizen, a Pennsylvania high school English teacher learned firsthand that this freedom does not extend to all speech.

Teacher Natalie Munroe maintained a private blog titled, "Where are we going, and why are we in this handbasket?"

She blogged under her first name and last initial, and did not reveal where she worked or lived. The blog allegedly had no more than nine subscribers, including Munroe and her husband. In addition to covering personal matters such as Munroe's food and film preferences, the blog also contained unflattering commentary on her students and co-workers.

On her blog Munroe frequently complained about the rudeness and lack of motivation of her students, whom she referred to as "jerk," "rat-like," "dunderhead" and "whiny."

She also commented that the parents were "breeding a disgusting brood of insolent, unappreciative, selfish brats."

The Central Bucks School District suspended and eventually terminated Munroe after the content of her blog became the subject of national news reports and sparked a firestorm of negative publicity.

The district contended the blog posts eroded the necessary trust and respect between Munroe and her students, and caused serious disruption to office operations because the statements in the blog attracted considerable negative attention from both parents and the public at large.

Munroe filed suit in the U.S. District Court for the Eastern District of Pennsylvania, contending the school district harassed and eventually terminated her employment based on her expression of constitutionally protected views under the First Amendment.

In support of her claims of harassment, Munroe cited her continued receipt of negative evaluations, the denial of her transfer request, and the requirement that she complete detailed and exhaustive lessons plans.

After determining that personal issues dominated the blog, U.S. District Judge Cynthia M. Rufe granted summary judgment to the school district.

She noted that unlike the plaintiffs in other public employee free speech cases, who spoke only to address matters of public concern and avoided the use of personal or inflammatory invective, Munroe mostly focused on negative interactions between herself and her students. *Pickering v. Bd. of Educ.*, 88 S. Ct. 1731 (1968); *Monsanto v. Quinn*, 674 F.2d 990 (3d Cir. 1982).

Judge Rufe observed that Munroe's blog, including an entry titled, "Things From This Day That Bothered Me," was distinguishable in tone and content from speech that has enjoyed constitutional protection. In particular, the court found the blog contained "gratuitously demeaning and insulting language inextricably intertwined with her occasional discussions of public issues."

The judge also said the disruptive nature of Munroe's speech diminished any legitimate interest in its expression, noting the statements attracted generated negative attention, from concerned parents and from the public at large.

Based on these findings, the judge found Munroe's expression unprotected, reasoning that since the teacher's comments did not merit protection under the *Pickering* balancing test, it was unnecessary to reach the question of whether her statements were a direct cause of her termination. **WJ**

Related Court Document:
Opinion: 2014 WL 3700325

Delaware high court orders new asbestos trial over hearsay testimony

A trial court in an asbestos-related wrongful-death case erred by failing to give the jury instructions on an employer's duty of care to employees and by allowing hearsay testimony that the defendant had bribed senators, the Delaware Supreme Court has ruled.

R.T. Vanderbilt Co. v. Galliher et al., No. 510, 2013, 2014 WL 3674180 (Del. July 24, 2014).

In an unpublished opinion, a three-judge panel of the state's highest court reversed the trial court's judgment and remanded the case for a new trial, setting aside a jury verdict of \$2.8 million for the plaintiff.

Starting in 1966 Michael Galliher had worked for nearly 40 years for Borg Warner Inc., primarily in a cast shop in Mansfield, Ohio, where he filled ceramic molds for bathroom fixtures, according to the opinion. In 2010 he was diagnosed with the asbestos-related lung cancer pleural mesothelioma and died the following year.

His estate sued R.T. Vanderbilt Co., alleging Galliher's illness was caused by exposure to asbestos in the industrial talc that Vanderbilt provided to Borg Warner and that Vanderbilt failed to warn users of its product's danger, the opinion said.

The powder was used in molds to allow the finished ceramic fixture to be easily removed from the cast, according to the opinion.

The estate asserted that employees working in the dusty cast shop were not warned of the risks of asbestos exposure or required to wear masks until the mid- to late 1980s.

At trial in the New Castle County Superior Court, Vanderbilt argued that its talc did not

contain asbestos or cause mesothelioma and that Borg Warner had a duty to provide a safe workplace for its employees, the opinion said.

The estate presented testimony that the talc did contain asbestos, including three witnesses who made hearsay statements about the defendant that were ruled inadmissible, prompting Vanderbilt to enter motions for a mistrial, according to the high court's opinion.

One witness, Dr. Barry Castleman, who has written a book about legal asbestos issues, alleged that sources told him that Vanderbilt lied about its product and attempted to obtain favorable regulatory rulings by "buying senators and lobbying the government," the opinion said.

The judge deferred the mistrial motions until after the jury's verdict and later declined to include a jury instruction that Vanderbilt requested on Borg Warner's duty to Galliher as his employer.

After the jury found Vanderbilt 100 percent liable for Galliher's illness and awarded his estate \$2.8 million, the defendant moved for a new trial on its earlier motions. The trial court granted it a new trial, and Vanderbilt appealed.

In an opinion written by Justice Henry duPont Ridgely, the state Supreme Court said the case is governed by Ohio law, which imposes "an affirmative duty" on employers to provide a safe workplace.

Justice Ridgely said the trial judge's failure to give the jury guidance on the state law was a material omission and reversible error.

"[T]he jury instructions ultimately given did not provide any statement of the law as to Borg Warner's duty of care under Ohio law even though Vanderbilt contended that Borg Warner breached its duty of care," he said.

While the trial judge asked the jury to determine if Borg Warner was at fault, he failed to give the jury any guidance on what acts or omissions would establish the employer's fault as a matter of law, Justice Ridgely explained.

In ruling that the trial court also erred in not declaring a mistrial, the Supreme Court said the judge's direction to the jury to disregard the hearsay on lying and bribery was not enough.

Even the trial judge worried about whether any amount of curative instruction would erase the testimony from the jurors' minds, Justice Ridgely noted.

Ruling that the testimony included "impermissible character evidence" on Vanderbilt that undermined the defendant's credibility on key trial issues, the high court ordered a new trial. [WJ](#)

Related Court Document:
Opinion: 2014 WL 3674180

Oklahoma federal judge grants judgment for International Paper in asbestos suit

International Paper Co. has won summary judgment in an Oklahoma federal court lawsuit brought by a woman who claimed injury from exposure to asbestos fibers on the work clothes of her husband, who worked for two box makers that IPC now owns.

***Bootenhoff et al. v. Hormel Foods Corp. et al.*, No. Civ-11-1368-D, 2014 WL 3744011 (W.D. Okla. July 30, 2014).**

U.S. District Judge Timothy D. DeGiusti of the Western District of Oklahoma said in a July 30 order that the defendant was entitled to judgment because the risk to its employee's wife was not foreseeable at the time of the alleged exposure in the late 1950s.

The "lack of foreseeability ... dictate[s] that IPC did not owe a duty of care to [plaintiff] Norma Bootenhoff," the judge said.

Norma and Eugene Bootenhoff filed the suit in the Oklahoma County District Court against several parties. One of the defendants removed the case to the federal court.

The Bootenhoffs alleged that Eugene worked at various jobs for box manufacturers Weyerhaeuser and Hoerner Waldorf, according to the opinion. IPC later acquired the two companies.

The suit alleged that Norma was exposed to asbestos when she laundered her husband's work clothes, the order said.

Norma developed the asbestos-related lung cancer mesothelioma and died in 2012.

The judge applied Oklahoma law in deciding IPC's motion.

"The relationship of the parties is a factor to be considered to determine duty of care, but it is not singularly dispositive," he said.

The duty exists when a prudent person would know that if he did not act with care under

the circumstances, he might cause injury another person, according to the order.

Judge DiGiusti looked at a case that the 10th U.S. Circuit Court of Appeals decided in which, applying Oklahoma law, the panel found no such duty existed toward an employee's spouse. *Rohrbaugh v. Owens-Corning Fiberglas Corp.*, 965 F.2d 844 (10th Cir. 1992).

In *Rohrbaugh*, the court found it was unknown prior to 1969 that secondary exposure to asbestos in the defendant's product could cause mesothelioma, the judge said.

He added there was no "moral blame" on the defendant "because the risk of harm to Norma Bootenhoff was not foreseeable." **WJ**

Related Court Document:
Order: 2014 WL 3744011

The WESTLAW JOURNALS blog is your source for the latest developments

in practice areas like business and finance, IP and technology, product liability, and environmental law.

Daily postings from our attorney-editors keep you up to date on important news and analysis and provide a look at what they're working on for future print issues of Westlaw Journals.



To access the blog, visit <http://blog.thomsonreuters.com/westlawjournals>



WESTLAW JOURNAL

CLASS ACTION

This reporter covers the proliferation of the class action lawsuit in numerous topic areas at the federal, state, and appeals court levels. Topics covered include consumer fraud, securities fraud, products liability, automotives, asbestos, pharmaceuticals, tobacco, toxic chemicals and hazardous waste, medical devices, aviation, and employment claims. Also covered is legislation, such as the 2005 Class Action Fairness Act and California's Proposition 64, and any new federal and state legislative developments and the effects these have on class action litigation.

Call your West representative for more information about our print and online subscription packages, or call 800.328.9352 to subscribe.

ATTORNEY ADVERTISING

New Jersey lawyer wins challenge to advertising regulation change

A New Jersey lawyer whose use of laudatory quotes from judicial opinions on his firm's website prompted the state to amend its attorney advertising guidelines to require that the entire opinion be displayed has convinced a federal appeals court that the rule violates his free speech rights.

Dwyer et al. v. Cappell et al., No. 13-3235, 2014 WL 3893001 (3d Cir. Aug. 11, 2014).

A three-judge panel of the 3rd U.S. Circuit Court of Appeals concluded the goal of the rule — to prevent the public from possibly being misled by out-of-context quotes — is not achieved by requiring attorneys to publish the entire opinion. It also held the rule is unduly burdensome.

THE LAWYER

Andrew Dwyer, an attorney in Newark, received praise in two different judicial opinions for his work in employment discrimination lawsuits, the 3rd Circuit opinion said. He published the complimentary portions of the opinions on the Dwyer Law Firm's website.

One of the judges asked him in an April 2008 letter to remove his quoted comment, according to the opinion. Dwyer declined, saying the language was neither false nor misleading.

The letter and Dwyer's response made their way to the New Jersey Bar's committee on attorney advertising.

Four years after the judge sent the letter, the New Jersey Supreme Court approved a change to the state's attorney advertising guidelines. The change banned advertising with quotes from judges or judicial opinions, but allowed attorneys to advertise with the full text of judicial opinions.

Dwyer responded by filing a civil rights action in New Jersey federal court against the members of the advertising committee. He claimed the guideline was an unconstitutional infringement on his right to free speech.

The U.S. District Court for the District of New Jersey granted summary judgment to the committee. It found the guideline did not ban speech, but merely imposed a disclosure requirement that was reasonably related to the state's interest in preventing consumer deception.

Dwyer appealed to the 3rd Circuit. He argued the guideline is a restriction on speech that should be subjected to a higher level of scrutiny than whether it is reasonably related to the state's interest.

The appeals court said it did not need to resolve that question. It concluded, instead, that the guideline is unconstitutional because it is not reasonably related to preventing consumer deception.

Even assuming that excerpts of judicial opinions are potentially misleading to some consumers, "the committee fails to explain how Dwyer's providing a complete judicial opinion somehow dispels this assumed threat of deception," the appeals court said.

The panel explained that a more reasonable attempt at a disclosure requirement might be a statement along with the quote that says: "This is an excerpt of a judicial opinion from a specific legal dispute. It is not an endorsement of my abilities."

The 3rd Circuit also found the full-text guideline is unduly burdensome.

The guideline prevents a lawyer from using even an accurately quoted excerpt about his or her abilities from a judicial opinion.

"[W]hat is required by the guideline overly burdens Dwyer's right to advertise," the appeals court concluded. **WJ**

Related Court Document:
Opinion: 2014 WL 3893001

Additional supply chain disclosures by U.S. public companies proposed

By Michael R. Littenberg, Esq., Farzad F. Damania, Esq., and Andrea Matos, Esq.
Schulte Roth & Zabel

In mid-June, U.S. Rep. Carolyn Maloney, D-N.Y., introduced the Business Supply Chain Transparency on Trafficking and Slavery Act of 2014, H.R. 4842, which would amend the Securities Exchange Act of 1934. Among other things, the proposed legislation requires many public companies to disclose measures taken to identify and address conditions of forced labor, slavery, human trafficking and child labor within the supply chain. Maloney introduced a comparable bill in 2011, but it was not enacted.

Similar in approach to the Securities and Exchange Commission's "conflict minerals" rule, the intent of the proposed act is to encourage ethical labor practices by requiring disclosure by public companies. The conflict minerals rule requires public companies to disclose whether they use certain minerals from the Democratic Republic of the Congo or neighboring countries. The requirement is designed to curb violence associated with the mining of the minerals. Maloney's bill says through publicly available disclosures, businesses and consumers can avoid inadvertently promoting child labor, forced labor, slavery and human trafficking through the production and purchase of goods and products that have been tainted in the supply chains.

Due, in part, to the difference in subject matter, however, the disclosure requirements under the proposed act are significantly different from those under the conflict minerals rule.

The proposed act would add a new Section 13(s) to the Exchange Act. Section 13(s) would require the Securities and Exchange Commission, in consultation with the secretary of state, to, within one year of enactment, promulgate regulations requiring a "covered issuer" (as defined below) to file disclosure reports with the SEC annually. These reports would disclose whether the issuer has taken measures during the year to identify and address conditions of forced labor, slavery, human trafficking and the worst forms of child labor within its supply chain, and what measures were taken.

ISSUERS COVERED BY THE ACT

A "covered issuer" is defined in the proposed act as an issuer that has annual worldwide global receipts in excess of \$100 million. This reporting threshold is consistent with the California Transparency in Supply Chains Act adopted in 2010. The proposed universe of reporting issuers is narrower than that under the conflict minerals rule, which does not have a dollar threshold for reporting.



Courtesy of maloney.house.gov
U.S. Rep. Carolyn Maloney, shown here, has introduced a bill that would require many public companies to disclose measures taken to identify and address conditions of forced labor, slavery, human trafficking and child labor within the supply chain.

KEY DEFINITIONS

The proposed act defines the term "supply chain" broadly to include all labor recruiters and suppliers of products, component parts of products and raw materials used by a covered issuer in the manufacturing of its products. It does not matter whether the issuer has a direct relationship with the supplier.

The terms "forced labor," "slavery" and "human trafficking" are defined as any labor practice or human trafficking activity in violation of national and international standards. These standards include International Labor Organization Convention No. 182, the Trafficking Victims Protection Act of 2000 and 18 U.S.C. § 1581, ch. 77.

"The worst forms of child labor" means child labor in violation of national and international standards, including International Labor Organization Convention No. 182.

ISSUER DISCLOSURE REQUIREMENTS

A covered issuer would be required to include under the heading "Policies to Address Forced Labor, Slavery, Human Trafficking and the Worst Forms of Child Labor" information describing the following:

- Whether it maintains a policy to identify and eliminate the risks of forced labor,



Michael R. Littenberg (L) is a partner at Schulte Roth & Zabel in New York, where he heads the public companies practice. He has over 20 years of experience advising on responsible sourcing matters and compliance. Farzad F. Damania (C) is special counsel and Andrea Matos (R) is an associate at the firm.

slavery, human trafficking and the worst forms of child labor within its supply chain, and actions that it has taken pursuant to, or in the absence of, the policy. The disclosure would be required to include the text of the policy or a substantive description of the elements of the policy.

- Whether it maintains a policy prohibiting its employees and employees of entities associated with its supply chain from engaging in commercial sex acts with a minor.

- Its efforts to evaluate and address the risks of forced labor, slavery, human trafficking and the worst forms of child labor in the product supply chain. If these efforts have been made, the disclosure will be required to:

(1) Describe any risks identified within the supply chain and the measures taken toward eliminating those risks;

(2) Specify whether the evaluation was or was not conducted by a third party;

(3) Specify whether the process included consultation with independent labor organizations (as defined in the National Labor Relations Act), workers' associations or workers within workplaces and incorporates the resulting input or written comments from such constituencies. If so, the disclosure will be required to describe the entities consulted and specify the method of the consultation; and

(4) Specify the extent to which the process covers entities within the supply chain, including entities upstream in the product supply chain and entities across lines of products or services.

- Its efforts to ensure that audits of suppliers within its supply chain are conducted to:

(1) Investigate the working conditions and labor practices of such suppliers.

(2) Verify whether such suppliers have in place appropriate systems to identify risks of forced labor, slavery, human trafficking and the worst forms of child labor within their own supply chain.

(3) Evaluate whether such systems are in compliance with the policies of the covered issuer or efforts in the absence of such policies.

- Its efforts to:

(1) Require suppliers to attest that the manufacture of materials incorporated into any product is carried out in compliance with laws regarding forced labor, slavery, human trafficking and child labor of the countries where the issuer does business.

(2) Maintain internal accountability standards, supply chain management, procurement systems and procedures for employees, suppliers, contractors or other entities within its supply chain that fail to meet the covered issuer's standards, including a description of the standards, systems and procedures.

(3) Train employees and management who have direct responsibility for supply chain management on issues related to forced labor, slavery, human trafficking and the worst forms of child labor, particularly with respect to mitigating risks within product supply chains.

(4) Ensure labor recruitment practices at all suppliers comply with the issuer's policies — or efforts, in the absence of policies— for eliminating exploitive labor practices contributing to forced labor, slavery, human trafficking and the worst forms of child labor. This includes complying with audits of labor recruiters and disclosing the results of the audits.

- The efforts of the covered issuer, where forced labor, slavery, human trafficking and the worst forms of child labor have been identified within the supply chain, to ensure remedial action is provided to those who have been identified as victims. This could include support for programs designed to prevent the recurrence of those events within the industry. The proposed act defines "remediation" and "remedial action" as "the activities or systems that an issuer puts in place to address noncompliance with the standards identified through monitoring or verification, which may apply to individuals adversely affected

by the noncompliant conduct or address broader systematic processes."

In addition to Exchange Act reporting, under the proposed law, a covered issuer would also be required to include on its website a conspicuous and easily understandable link to the information included in its Exchange Act report. This would be labeled "Global Supply Chain Transparency."

If an individual submits a written request to the covered issuer for the information, the covered issuer would be required to provide the individual with a written disclosure of the required information within 30 days after receipt of the request.

Notwithstanding the laudable humanitarian goals of the bill, it is not expected to have the support necessary to become law.

DISCLOSURES BY THE SEC AND DEPARTMENT OF LABOR

In addition to the disclosures required to be made by covered issuers, the proposed act would require additional disclosures by the SEC and the Department of Labor.

Both the SEC and the Department of Labor would be required to make available to the public, in a searchable format, on their websites:

- A list of covered issuers required to disclose any measures taken to identify and address conditions of forced labor, slavery, human trafficking and the worst forms of child labor within the supply chain.
- A compilation of the information submitted under the rules adopted pursuant to Section 13(s) of the Exchange Act.

In addition, the secretary of labor would be required to annually develop, and publish on the DOL website, a list of the top 100 companies adhering to supply chain labor standards, as established under relevant federal and international guidelines. To do this, the secretary of labor would consult with the secretary of state and other appropriate federal and international agencies, independent labor evaluators and human rights groups.

TAKE-AWAYS FROM THE BILL

Notwithstanding the laudable humanitarian goals of the proposed act, it is not expected to have the support necessary to become law. As noted above, similar legislation was proposed in 2011.

Even in the absence of additional SEC rule-making, however, public and private companies should be mindful of existing legislation pertaining to ethical labor practices in the supply chain, as well as other proposed rules in this area. For example, in September 2013, the Federal Acquisition Regulatory Council published a proposed rule that would impose significant additional requirements relating to human trafficking and forced labor in the supply chain on federal contractors and subcontractors. This rule is in the process of being finalized.

Furthermore, as with conflict minerals sourcing, ethical labor practices in the supply chain are receiving increasing attention from nongovernmental organizations, socially responsible investors, the press, consumers, commercial customers and providers of corporate social responsibility, or CSR, analytics.

Therefore, it is still premature for public companies and other supply chain participants to adopt procedures specifically designed to comply with the Business Supply Chain Transparency on Trafficking and Slavery Act of 2014 as part of their CSR programs and values. In light of this attention, though, public companies that have not done so recently should at least assess their current policies and procedures relating to ethical labor practices in the supply chain and determine whether enhancements should be made. [WJ](#)

NEWS IN BRIEF

LOWE'S TO PAY \$3.4 MILLION IN MANAGERS' OVERTIME CLASS ACTION

Lowe's Home Centers has agreed to pay \$3.4 million to settle a nationwide class action accusing the hardware giant of misclassifying its human resource managers as overtime-exempt. The agreement, filed Sept. 5 in the U.S. District Court for the Middle District of Florida, will resolve lead plaintiff Lizeth Lytle's Fair Labor Standards Act suit, which sought back pay on behalf of nearly 900 current and former Lowe's HR managers. According to the joint motion for approval of the settlement, each member of the plaintiff class will receive about \$2,000 under the agreement. The \$3.4 million sum also includes \$1.5 million in attorney fees and costs, plus an incentive payment of up to \$7,000 for Lytle, the motion said.

Lytle v. Lowe's Home Centers Inc. et al., No. 12-cv-01848, motion for approval of settlement filed (M.D. Fla. Sept. 5, 2014).

PEP BOYS SETTLES CALIFORNIA WAGE SUIT FOR \$3.6 MILLION

Pep Boys will pay \$3.6 million to settle a class action accusing the auto parts retailer of the paying workers in California less than the state minimum wage. The suit, which three Pep Boys employees brought in the U.S. District Court for the Northern District of California, claimed that the company violated state labor laws by intentionally building non-productive time into its workers' schedules to reduce their wages and commissions. The workers sought back pay and damages on behalf of more than 1,500 former Pep Boys employees in 130 locations across California. According to an Aug. 22 motion for preliminary approval of the settlement, the \$3.6 million sum includes \$1.1 million in attorney fees and costs. The amount each former employee receives will depend on what job he held and how long he worked for Pep Boys between 2008 and 2011, the motion says.

Tokoshima et al. v. Pep Boys Manny Moe & Jack of California et al., No. 12-cv-04810, motion for preliminary approval of settlement filed (N.D. Cal. Aug. 22, 2014).

COKE BOTTLER PAYS \$475K TO SETTLE SEX DISCRIMINATION CLAIMS

Great Plains Coca-Cola Bottling Co. has agreed to pay \$475,000 to settle U.S. Department of Labor charges that it discriminated against 1,300 women based on their gender. According to a Sept. 4 Labor Department statement, the bottling company was less likely to hire women for some positions, including driver and warehouse worker, than men. That pattern of conduct violated regulations prohibiting government contractors from engaging in discriminatory hiring, the agency said. In addition to paying nearly a half-million in back wages, the company has agreed to offer jobs to more than 100 of the women as positions become available.

OFF-DUTY DUI ARREST COSTS POLICE OFFICER JOB, UNEMPLOYMENT BENEFITS

Ruling: In an unreported decision, the Pennsylvania Commonwealth Court affirmed the determination of the Unemployment Compensation Board of Review that a seven-year police veteran was ineligible for benefits following his suspension and termination for an off-duty arrest for driving under the influence.

What it means: The employer was entitled to regard the claimant's off-duty conduct as work-related misconduct under Section 402(e) of the Unemployment Compensation Law because the claimant accepted accelerated rehabilitative disposition for a DUI offense, which the employer's policies treated as a criminal conviction with disciplinary consequences.

Borough of Fountain Hill v. Unemployment Compensation Board of Review, 46 PPER 19 (Pa. Commw. Ct. Aug. 7, 2014).

PLRB VACATES UNFAIR-PRACTICE FINDING, SAYS INSUBORDINATION SUPPORTS DISCHARGE

Ruling: The Pennsylvania Labor Relations Board sustained in part a county employer's exceptions to a hearing examiner's determination that the employer failed to rebut a *prima facie* showing that anti-union animus motivated its decision to terminate a deputy sheriff, who was also a visible union activist. After reviewing the totality of the circumstances, the PLRB concluded a preponderance of substantial evidence supported the hearing examiner's inference of animus in the termination decision. However, the board concluded the hearing examiner erred in finding that the employer's proffered nondiscriminatory reason for the discharge — the employee's insubordination in refusing to comply with the order to complete a "to/from" memo explaining his alleged tardiness — was insufficient to rebut that *prima facie* showing. Accordingly, the PLRB ordered the proposed decision and order, 45 PPER 61 (Pa. Labor Relations Bd., H. Exam'r Dec. 11, 2013), vacated, dismissed the instant unfair-labor-practice charges and rescinded the unfair-practice complaint.

What it means: A *prima facie* case of discrimination is established when the complainant is able to demonstrate participation in protected activity, the employer was aware of the protected activity, and that the employer took an adverse action against the employee because of the protected activity. If the complainant satisfies all three elements, the burden then shifts to the employer to rebut that showing by articulating a legitimate business justification for the adverse action. Here, the proffered explanation — the deputy's insubordination — was sufficient to rebut the *prima facie* case of discrimination established by the deputy sheriffs association. The PLRB concluded the totality of the circumstances demonstrated that the asserted justification for the termination was not a pretext where the employer's disciplinary policies provided for progressive discipline, and insubordination was punishable "up to and including termination."

Deputy Sheriffs Association of Chester County v. Chester County, 46 PPER 22 (Pa. Labor Relations Bd. Aug. 19, 2014).

APPELLATE COURT UPHOLDS AWARD REINSTATING TEACHER FIRED FOR OFF-DUTY DUI

Ruling: An arbitration award that ordered the reinstatement of a teacher discharged for "immorality" because of three incidents of driving while impaired did not violate the well-defined public policy against drinking and driving under the influence, a panel majority of the Pennsylvania Commonwealth Court ruled. Accordingly, the majority reversed a trial court's decision to vacate the [award](#).

What it means: In *Westmoreland Intermediate Unit No. 7*, 595 Pa. 648 (Pa. 2007), the Pennsylvania Supreme Court adopted the public policy exception to the highly deferential standard of review afforded a grievance arbitration award. The public policy exception requires the court to consider whether the arbitrator's award "contravenes a well-defined dominant public policy that is ascertained by reference to the laws and legal precedents and not from mere general considerations of supposed public interests." The high court emphasized that the focus in a public policy exception analysis must be on whether the award, if enforced, would contravene public policy, not whether the misconduct of the grievant violated public policy. Here, the arbitrator found that the teacher was a recovered alcoholic who no longer drank and drove, and whose successful attendance at a rehabilitation center demonstrated he had clearly learned from his mistakes. Therefore, since those findings bound both the appellate court and the trial court, the trial court incorrectly revisited the teacher's conduct in determining, contrary to the arbitrator, that the teacher remained a threat to school-aged children based on his prior convictions, the appellate court reasoned.

Blairsville-Saltsburg School District v. Blairsville-Saltsburg Education Association, 46 PPER 24 (Pa. Commw. Ct. Aug. 20, 2014).

WORKPLACE PROFANITY-LACED TIRADE RENDERS CLAIMANT INELIGIBLE FOR UNEMPLOYMENT BENEFITS

Ruling: The Ohio Court of Appeals affirmed the decision of a common pleas court denying unemployment compensation benefits to a municipal housing authority employee terminated for engaging in a profanity-laced tirade outside a housing authority property. Applying the list of factors set out in *Lombardo v. Ohio Bureau of Employment Services*, 119 Ohio App. 3d 217 (Ohio Ct. App., 6th Dist. 1997), the appellate court found the instant matter was distinguishable from cases involving termination for a single instance of workplace profanity because the claimant's use of profanity reflected a pattern of conduct for which he was previously disciplined, and therefore he "knew or should have known that loudly using profanity while at work could result in disciplinary action." Moreover, unlike in *Lombardo*, the language used by the employee in the case at bar was vulgar and severe, and he was at the end of the employer's progressive disciplinary policy when discharged, the appellate court reasoned.

What it means: An individual who quits work without cause or is discharged for cause in connection with work is ineligible for unemployment compensation under state law, Ohio Rev. Code § 4141.29(D)(2)(a).

Mitchell v. Ohio Department of Children and Family Services et al., 32 OPER 28 (Ohio Ct. App. Sept. 4, 2014).

SCHOOL BOARD'S LETTER TO NEGOTIATIONS UNIT MEMBERS COMPORTS WITH EERA

Ruling: The New Jersey Public Employment Relations Commission's director of unfair practices dismissed an unfair-practice charge, finding no merit in a teachers union's contention that the employer engaged in improper "direct dealing" by emailing a certain letter to staff members. No violation of the state's Employer-Employee Relations Act occurred because the letter did not threaten reprisal or promise benefits, the director found. The parties' ground rules for negotiations did not prohibit the employer from publicizing its salary proposal at a televised school board meeting, the director concluded.

What it means: Under PERC case law, the director noted, EERA provisions do not limit a public employer's right to express opinions about labor relations so long the statements are not coercive. In addition, an employer maintains the right to advise employees of the conduct of negotiations if the communication is not coercive.

Bayonne Board of Education and Bayonne Teachers Association, 41 NJPER 10 (N.J. Pub. Employment Relations Comm'n, Unfair Practice Dir. June 16, 2014).

TEACHER RAISES UNSUCCESSFUL CHALLENGE TO CONVENING OF GRADE CHANGE REVIEW PANEL

Ruling: The Michigan Employment Relations Commission dismissed unfair-practice charges brought by a teacher against a school district and a union. It found no merit in the charging party's contention that the employer retaliated against her by convening a grade change review panel after a student disputed a failing grade. The charging party did not allege facts establishing that the union acted arbitrarily, discriminatorily or in bad faith in connection with its handling of the grade change matter, the administrative law judge concluded.

What it means: MERC observed that a union has considerable discretion in deciding how or whether to proceed with a grievance, and it must be permitted to assess each grievance with a view to its individual merit. The union is not required to follow the dictates of any individual employee, but may instead investigate and handle the case in the manner it determines to be best.

Utica Community Schools and Utica Education Association, 28 MPER 11 (Mich. Employment Relations Comm'n Aug. 14, 2014).

COUNTY'S REFUSAL TO PROVIDE REQUESTED INFORMATION TO COUNTY COMPORTS WITH MMBA

Ruling: Despite a union's contention that the county employer violated California's Meyers-Milias-Brown Act by failing to fulfill its information request, the state's Public Employment Relations Board's administrative law judge issued a proposed dismissal of the charge. The union requested information concerning allegations against a deputy district attorney who was issued a termination notice. Information requested for use before the Civil Service Commission as an extra-contractual forum was not presumptively relevant, the ALJ found. The union did not show that the transcripts were otherwise relevant to its representational responsibilities, the ALJ concluded.

What it means: The ALJ cited PERB case law holding that information requested for use in an extra-contractual forum is not presumptively relevant.

Stationary Engineers, Local 39, Placer Public Employees Organization v. County of Placer, 39 PERC 22 (Cal. Pub. Employment Relations Bd., Admin. Law Judge July 31, 2014).

Ladik et al. v. Wal-Mart Stores Inc., No. 13-123, 2014 WL 4187446 (W.D. Wis. Aug. 22, 2014).

U.S. District Judge Barbara B. Crabb of the Western District of Wisconsin granted Wal-Mart summary judgment on the women's disparate-treatment claims Aug. 22 for lack of evidence after dismissing class-action claims last year.

the employees who charged Wal-Mart with discrimination failed to show there were questions of law or fact common to the class. *Wal-Mart Stores v. Dukes*, 131 S. Ct. 2541 (U.S. 2011).

The Wisconsin suit involved women who had been part of the rejected *Dukes* class, seeking to represent all female employees who had worked a specific Wal-Mart region covering Wisconsin, Michigan, Indiana and Illinois.

The regional suits allege that Wal-Mart engaged in a pattern or practice of gender

Wal-Mart then filed a motion for summary judgment to dismiss the plaintiffs' disparate-treatment claims.

In her written opinion, Judge Crabb reviewed the individual claims of each of the four named plaintiffs and concluded none of them offered evidence that their alleged discrimination was linked to company policy.

Simply showing a statistical difference between male and female pay and promotions at Wal-Mart is not enough, the judge said.

The plaintiffs failed to show that their male counterparts were promoted because of gender discrimination rather than other considerations such as experience, according to the opinion.

While one plaintiff expressed a belief that she was paid less than a male employee in what she described as a similar position, the allegation was "conclusory," Judge Crabb said, because it was unsupported by evidence that discussed the different skills involved in each position.

Ultimately, the judge concluded, the "plaintiffs' [briefing] has an obvious and fatal problem ... plaintiffs make no effort to connect the wages that plaintiffs in particular or female employees in general received to any specific employment practice." **WJ**

Attorneys:

Plaintiffs: James H. Kaster, Nicholas Kaster PLLP, Minneapolis

Defendant: Theodore J. Boutrous Jr., Gibson, Dunn & Crutcher, Los Angeles

Related Court Document:

Opinion: 2014 WL 4187446

See Document Section A (P. 25) for the opinion.

The suit was one of several regional suits stemming from a massive nationwide class action against Wal-Mart that the U.S. Supreme Court rejected three years ago.

The plaintiffs provided no evidence that would convince a reasonable jury that the retail giant discriminated against them in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, Judge Crabb said.

"Plaintiffs refer generally to several policies that they say are discriminatory, but they fail to show any causal connection between those policies and women's level of pay," she said.

The complaint is one of several regional suits stemming from a nationwide class action against Wal-Mart that the U.S. Supreme Court rejected three years ago.

In 2011 the Supreme Court unanimously decertified the largest employment class action ever filed, which included more than 1 million women nationwide, finding that

discrimination by denying women equal pay and equal opportunity for promotion in violation of Title VII.

The plaintiffs say the company delegates decisions about pay and promotions to regional managers, who deny female employees opportunities because of their gender.

In May 2013 Judge Crabb dismissed the women's class claims, finding that the Wisconsin-region plaintiffs failed to meet the commonality standards the Supreme Court set in *Dukes*.

Without a way to connect the decisions of all the regional managers to the proposed class members, the judge said, the plaintiffs offer only a "hodgepodge of different alleged policies and practices."

RECENTLY FILED COMPLAINTS FROM WESTLAW COURT WIRE*

| Case Name | Court | Docket # | Filing Date | Allegations | Damages Sought |
|---|---------------------------------|---------------|-------------|---|--|
| Smith v. National Heating & Air Conditioning Inc. 2014 WL 4253954 | Fla. Cir. Ct. (Pinellas) | 14006349CI | 8/22/14 | National Heating & Air Conditioning Inc. constructively discharged plaintiff receptionist because of sexual harassment by co-workers and management. | \$15,000 in unpaid wages and losses |
| J.A. ex rel. Cirino v. Sriyantraa Inc. 2014 WL 4186291 | S.D.N.Y. | 1:14-cv-6892 | 8/25/14 | Class action. Sriyantraa Inc. failed to pay employees the statutory required minimum and overtime wages, and through fear and intimidation forced them to distribute counterfeit bills to unsuspecting customers. | Class certification, compensatory and liquidated damages, declaratory relief, interest, fees and costs |
| Daniel v. ICM Partners 2014 WL 4186309 | Cal. Super. Ct. (Los Angeles) | BC555610 | 8/25/14 | ICM Partners wrongfully terminated plaintiff after negligently allowing him to be subjected to a hostile working environment and discrimination on account of his race and national origin. | General, special, consequential, incidental and punitive damages; declaratory and injunctive relief; penalty; expenses; interest; fees and costs |
| Burleson v. Collin County Community College District | Tex. Dist. Ct. (Dallas) | DC-14-09522 | 8/28/14 | Collin County Community College District took adverse action against employee in retaliation for reporting that some employees and high-ranking officials in the district are engaged in theft of college textbooks. | An amount within jurisdictional limits, declaratory and injunctive relief, interest, fees and costs |
| Blake v. Hill & Co. Property Management Inc. | Cal. Super. Ct. (San Francisco) | CGC-14-541429 | 8/29/14 | Hill & Co. Property Management Inc. fired employee in retaliation for complaining about the company's harassment and discriminatory treatment. | General, special and punitive damages; back and front pay; interest; fees and costs |
| Boyer ex rel. Boyer v. Best Circuit Boards Inc. | Tex. Dist. Ct. (Dallas) | DC-14-09543 | 8/29/14 | Best Circuit Boards Inc. wrongfully terminated employee, who is now deceased, because of her disability. | Compensatory, exemplary and punitive damages; interest; fees and costs |
| Gatlin v. Coca-Cola Refreshments USA 2014 WL 4313269 | E.D. La. | 2:14-cv-02001 | 9/2/14 | Removed from the 24th Judicial District Court of Jefferson Parish, La., docketed as civil case No. 740-541. Coca-Cola Refreshments USA Inc. discriminated against employee based on race and gender by creating a hostile work environment. | Damages, fees and costs |

*Westlaw Court Wire is a Thomson Reuters news service that provides notice of new complaints filed in state and federal courts nationwide, sometimes within minutes of the filing.

RECENTLY FILED COMPLAINTS FROM WESTLAW COURT WIRE*

| Case Name | Court | Docket # | Filing Date | Allegations | Damages Sought |
|--|-------------------------------|----------------|-------------|--|---|
| Mesias v. Cravath, Swaine & Moore 2014 WL 4313219 | S.D.N.Y. | 1:14-cv-7070 | 9/2/14 | Law firm Cravath, Swaine & Moore discriminated against and terminated employee before the end of a probationary period because of her race. | Compensatory and punitive damages, injunctive relief, front pay, disbursement, fees and costs |
| Salim v. Washington Township Health Care District | Cal. Super. Ct. (Alameda) | HG14738898 | 9/2/14 | The Washington Township Health Care District discriminated against employee based on his national origin and religion and terminated him without good cause. | General, exemplary and punitive damages; interest; fees and costs |
| Carter v. Los Angeles Entertainment Inc. | Cal. Super. Ct. (Los Angeles) | BC556324 | 9/2/14 | Class action. Los Angeles Entertainment Inc. failed to provide employees with rest periods and minimum and overtime compensation. | Class certification; compensatory, consequential and special damages; injunctive relief; interest; fees and costs |
| Cervantes v. Rooter Hero Plumbing Inc. | Cal. Super. Ct. (Los Angeles) | BC556311 | 9/2/14 | Rooter Hero Plumbing Inc. failed to provide employee with rest periods and minimum and overtime compensation. | Compensatory damages, restitution, disgorgement, interest, fees and costs |
| Vasquez v. TWC Administration LLC | Cal. Super. Ct. (Los Angeles) | BC556326 | 9/2/14 | Class action. TWC Administration failed to pay employees wages and waiting time penalties. | Liquidated damages, declaratory and injunctive relief, disgorgement, restitution, interest, fees and costs |
| Schneider v. Perkins | Minn. Dist. Ct. (Hennepin) | 27-CV-14-14868 | 9/2/14 | Perkins negligently allowed employee to be sexually harassed and stalked by customers. | More than \$50,000, plus interest, fees and costs |
| Weithofer v. The Carlyle Hotel | N.Y. Sup. Ct. (Kings) | 0508029/2014 | 9/2/14 | The Carlyle Hotel discriminated against employee by failing to reasonably accommodate his disability and wrongfully terminating him based on the disability. | Compensatory and punitive damages, disbursements and fees |
| Gilyard v. Nime West Group Inc. 2014 WL 4354644 | S.D.N.Y. | 1:14-cv-7096 | 9/3/14 | Nime West Group Inc. discriminated against plaintiff because of his race and color. | Back and front pay, lost wages and benefits, compensatory and punitive damages, expenses, fees and costs |

*Westlaw Court Wire is a Thomson Reuters news service that provides notice of new complaints filed in state and federal courts nationwide, sometimes within minutes of the filing.

CASE AND DOCUMENT INDEX

| | |
|---|----|
| <i>Alexander et al. v. FedEx Ground Package System Inc.</i> , Nos. 12-17458 and 12-17509, 2014 WL 4211107 (9th Cir. Aug. 27, 2014) | 7 |
| Document Section C | 34 |
| <i>Bayonne Board of Education and Bayonne Teachers Association</i> , 41 NJPER 10 (N.J. Pub. Employment Relations Comm’n, Unfair Practice Dir. June 16, 2014)..... | 19 |
| <i>Blairsville-Saltsburg School District v. Blairsville-Saltsburg Education Association</i> , 46 PPER 24 (Pa. Commw. Ct. Aug. 20, 2014) | 18 |
| <i>Bonillas v. United Airlines Inc. et al.</i> , No. 12-cv-06574, 2014 WL 4087906 (N.D. Cal., Oakland Div. Aug. 19, 2014) | 9 |
| <i>Bootehoff et al. v. Hormel Foods Corp. et al.</i> , No. Civ-11-1368-D, 2014 WL 3744011 (W.D. Okla. July 30, 2014)..... | 13 |
| <i>Borough of Fountain Hill v. Unemployment Compensation Board of Review</i> , 46 PPER 19 (Pa. Commw. Ct. Aug. 7, 2014)..... | 18 |
| <i>Crosby v. Wells Fargo Bank NA</i> , No. 14-cv-05594, 2014 WL 4378774 (C.D. Cal. Sept. 3, 2014) | 6 |
| Document Section B | 31 |
| <i>Deputy Sheriffs Association of Chester County v. Chester County</i> , 46 PPER 22 (Pa. Labor Relations Bd. Aug. 19, 2014)..... | 18 |
| <i>Dwyer et al. v. Cappell et al.</i> , No. 13-3235, 2014 WL 3893001 (3d Cir. Aug. 11, 2014)..... | 14 |
| <i>Ladik et al. v. Wal-Mart Stores Inc.</i> , No. 13-123, 2014 WL 4187446 (W.D. Wis. Aug. 22, 2014) | 1 |
| Document Section A | 25 |
| <i>Lytle v. Lowe’s Home Centers Inc. et al.</i> , No. 12-cv-01848, <i>motion for approval of settlement filed</i> (M.D. Fla. Sept. 5, 2014) | 17 |
| <i>Mitchell v. Ohio Department of Children and Family Services et al.</i> , 32 OPER 28 (Ohio Ct. App. Sept. 4, 2014) | 18 |
| <i>Munroe v. Central Bucks School District</i> , No. 12-3546, 2014 WL 3700325 (E.D. Pa. July 25, 2014)..... | 11 |
| <i>Naik et al. v. 7-Eleven Inc.</i> , No. 13-4578, 2014 WL 3844792 (D.N.J. Aug. 5, 2014) | 10 |
| <i>Patterson v. Domino’s Pizza LLC et al.</i> , No. S204543, 2014 WL 4236175 (Cal. Aug. 28, 2014) | 8 |
| <i>R.T. Vanderbilt Co. v. Galliher et al.</i> , No. 510, 2013, 2014 WL 3674180 (Del. July 24, 2014) | 12 |
| <i>Slayman et al. v. FedEx Ground Package System Inc.</i> , Nos. 12-35525 and 12-35559, 2014 WL 4211422 (9th Cir. Aug. 27, 2014) | 7 |
| <i>Stationary Engineers, Local 39, Placer Public Employees Organization v. County of Placer</i> , 39 PERC 22 (Cal. Pub. Employment Relations Bd., Admin. Law Judge July 31, 2014)..... | 19 |
| <i>Tokoshima et al. v. Pep Boys Manny Moe & Jack of California et al.</i> , No. 12-cv-04810, <i>motion for preliminary approval of settlement filed</i> (N.D. Cal. Aug. 22, 2014) | 17 |
| <i>Utica Community Schools and Utica Education Association</i> , 28 MPER 11 (Mich. Employment Relations Comm’n Aug. 14, 2014)..... | 19 |