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# LEAGUE OF CALIFORNIA CITIES 2022 CITY ATTORNEYS' SPRING CONFERENCE

## Labor and Employment Litigation Update

*5/5/2022*

*PRESENTED BY:*

Geoffrey S. Sheldon

# Labor and Employment Litigation Update

League of California Cities 2022 City Attorneys' Spring Conference | May 3, 2022

Presented By: Geoffrey S. Sheldon



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## Public Sector Employment Jury Verdicts

- *Bertone v. Los Angeles County (2021)*
  - \$8.4 million
- *Dooros, et al. v. City of Los Angeles (2019)*
  - \$8.6 million
- *Rodriguez v. County of Los Angeles (2019)*
  - \$8.1 million
- *Hadsell v. City of Baldwin Park (2019)*
  - \$7 million
- *Burns v. San Diego State University, et al. (2019)*
  - \$3.3 million



## Public Sector Employment Jury Verdicts (Cont.)

- *Harris v. City of Riverside (2019)*
  - \$2.3 million
- *Birden v. The Regents of the University of California (2019)*
  - \$1.5 million
- *Moreno, et al. v. City of Beverly Hills (2019)*
  - \$1.1 million
- *Thomas v. City of Los Angeles (2019)*
  - \$1 million
- *Thompson v. City of Pasadena (2019)*
  - \$824K

## Legislation

## Senate Bill 807

- Amends Fair Employment and Housing Act (FEHA)
- Various procedural changes to DFEH enforcement of California's civil rights law, and changes to statutes of limitation
- Requires employers to retain personnel records for at least 4 years; longer if a complaint is filed (currently, 2 year minimum)

## Senate Bill 331

Expands prior restrictions on non-disclosure provisions in employment agreements:

1. Settlement may not prevent or restrict disclosure of facts related to a civil or administrative claim regarding discrimination based on any protected classification
2. Employment-related non-disparagement/non-disclosure agreements unlawful if purpose or effect is to restrict employees right to disclose information about unlawful acts in workplace

## Cases



## Retaliation

- California Supreme Court announces new standard for “whistleblower” retaliation claims
  - Pursuant to Labor Code § 1102.6, a plaintiff has the initial burden to establish “by a preponderance of the evidence that an activity proscribed by Section 1102.5 was a contributing factor in the alleged prohibited action against the employee”
  - If the plaintiff meets this initial burden, the burden then shifts to the defendant to show “by clear and convincing evidence, that it would have taken the action in question for legitimate, independent reasons even had the plaintiff not engaged in protected activity”

*Lawson v. PPG Architectural Finishes, Inc.*, (2022) 12 Cal.5th 703



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## Discrimination – Statute of Limitations

California Supreme Court holds the time for filing a discrimination claim based on failure to promote begins when the employee knew or should have known of the decision to promote another.

- Other employee accepted promotion in March 2017, effective May 2017. Complaint filed April 2018.
- Plaintiff's opposition to summary judgment did not dispute timeline

*Pollock v. Tri-Modal Distribution Servs., Inc.*, (2021) 11 Cal.5th 918

## Retaliation

- Court of Appeal reversed summary judgment that upheld discipline for Police Officer who made threatening social media post
  - Courts may consider content of government employee's speech to balance free speech interest against employer's interest in maintaining discipline
  - Factual disputes about meaning of comment and lack of evidence of actual workplace disruption precluded summary judgment

*Moser v. Las Vegas Metropolitan Police Department* (9th Cir. 2021) 984 F.3d 900

## Discrimination – Race

- Allegedly racist comments made by an outside presenter at a business meeting may be actionable

*Smith v. BP Lubricants USA Inc.*, (2021) 64 Cal.App.5th 138 (2021).

## Discrimination – Gender & Age

- Summary judgment for university was improperly granted when superior court erroneously excluded evidence that the university rejected another job candidate because she “wanted someone younger”
  - This stray remark was relevant because it was made by an employee who could influence the hiring decision – had the decision-maker’s ear, etc.

*Jorgensen v. Loyola Marymount Univ.* (2021) 68 Cal.App.5th 882

## Personnel – Discipline

- Agency unlawfully terminated peace officer after he returned from leave

*Vincent v. Department of the California Highway Patrol*, 2021 WL 3878390 (Cal. Ct. App. Aug. 31, 2021), unpublished.

## FMLA Retaliation

- Terminated RN could not show hospital's reasons for her discharge were pretextual

*Wilkin v. Cmty. Hosp. of the Monterey Peninsula* (2021)  
71 Cal.App.5th 806



## Wage and Hour – Payroll Deductions

- Home rule doctrine allows a charter county to adopt MOU provision for deducting wage overpayments, notwithstanding Labor Code or wage garnishment laws
  - Union sued to invalidate MOU overpayment recovery provision for violating state Labor Code
  - Court held that state law does not prohibit charter county from negotiating MOU provision on recovering overpayments

*Association for Los Angeles Deputy Sheriffs v. County of Los Angeles*  
(2021) 60 Cal.App.5th 327

## Retirement

- Court found that the memorandum of understanding (MOU) between county and labor unions did not create implied vested right to grant benefit because the MOU did not specify how long retirees “shall receive” the promised benefit and the MOU was only for a set period of time

*Harris v. Cty. of Orange* (9<sup>th</sup> Cir. 2021) 17 F.4th 849

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## Retirement

- Retiree forfeited part of pension because of criminal conduct

*Wilmot v. Contra Costa County Employees' Retirement Association (2021) 60 Cal.App.5th 631*

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## Thank You!

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