



Employment Law Update

December 1, 2007

In This Update

- *Moakler v. County of Orange*: Appellate Court addresses what constitutes a hostile work environment

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On November 26, 2007, the Fourth District Court of Appeals reversed in part the trial court's ruling in regards to what constitutes a "pattern of continuous, and pervasive harassment." The ruling is favorable to California employers and provides guidance in determining if harassment is sufficient pervasive so as to alter the conditions of employment, creating a hostile work environment.

Highlight Article

Moakler v. County of Orange

No. G036029 - California Court of Appeal, 4th District, Division 3

Appellate Court addresses what constitutes a hostile work environment, specifically the requirement that the conduct be "continuous and pervasive."

Facts

Pamela Moakler, the Executive Director of the Office of Aging filed suit against her former employer, the County of Orange and Chris Norby, a county Supervisor for sexual harassment and retaliatory discharge. She alleged that during the course of her employment, she had three interactions with Norby over a five-week period whereby he made derogatory and sexual comments to her.

In the first incident, Norby asked Moakler if she was married. When she replied, "No," he replied, "So you are the aging nun." Moakler testified that she felt degraded by the comment and reported the incident to her superior. A few days later, Moakler ran into Norby again at a victory party for a newly elected Supervisor. Moakler alleged that Norby pulled her up to him so that their bodies were touching and in a flirtatious manner asked if she "had come here to lobby him." Norby also made a comment about how she looked in her suit and her legs. Again Moakler reported the conduct. A month later, at Norby's office, Norby commented that Moakler looked nice and put his arm around her. He walked her over to a large map and asked her where she lived and demanded that she give him her address. Moakler alleges that during this encounter, Norby rubbed her breast with his arm. Later that afternoon, Moakler overheard Norby state to a male staffer, "Why the "[f]uck]" do you have to do something special for the Mexicans." Moakler testified that this comment offended her.

Holding

Factors to consider in determining whether a work environment is hostile include the nature of the unwelcome acts, the frequency of the offensive encounters, the number of days the conduct occurred, and the context in which the conduct occurred. The acts of harassment cannot just be occasional, isolated, sporadic or trivial. The Court held that here, the alleged acts did not establish a "pattern of continuous, pervasive

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harassment." While Norby's action were rude, inappropriate and offensive, such harassment was not "sufficiently" pervasive so as to alter the conditions of employment and create a hostile and abusive working environment."

If you would like a copy of the case or for more information regarding employer liability, feel free to contact Allyson K. Myers of Kring & Chung, LLP at (949) 261-7700.

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*The information contained herein is for informational purposes only and should not be relied upon in reaching a conclusion in a particular area. The legal principles discussed herein were accurate at the time this article was authored but are subject to change with time. Applicability of these same legal principles may differ substantially in individual situations. Please consult an attorney before making a decision in a particular area using only the information provided in this article.

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