StephenDanz & ASSOCIATES

JUNE NEWSLETTER 2013

Dear Melanie,

Greetings from Stephen Danz & Associates! We're happy to be here in sunny Las Vegas at the CAAA Summer Convention 2013 in The Mirage Casino & Resort. Please stop by our booth in the Exhibit Hall. We look forward to seeing you there!

Sincerely,

Melanie Porter
Stephen Danz

Summer Convention in Vegas!

June 27 - 30, 2013

The Mirage Casino & Resort

Workplace Discrimination Under Title VII Made Tougher by Two US Supreme Court Decisions

Yesterday the US Supreme Court rendered its decision in *Vance vs. Ball State University*. In a nutshell, this decision held that an employer can only be liable for a co-workers' racial harassment if the co worker is a "supervisor" and, if a supervisor, then whether the employer was negligent in allowing the conduct to occur. The case is of significance in California since many lawsuits here are tried under Title VII (something that we try not to let happen when possible since employment lawsuits under the California Government Code usually result in better results for our clients), and in any case, many times California courts look to EEOC-based decisions for guidance.

In *Vance*, the plaintiff was harassed daily by a co worker/lead. The harassment took many forms, mostly of a personal nature, such as banging pots and pans, intimidating behavior, bad assignments, etc. Of critical importance, the co worker was mostly a day-to-day lead, with power to make assignments. However, the court held that under EEOC/Title VII law, the co worker was not a "supervisor." The court held that a supervisor is one with the power to hire, fire, promote, demote, transfer or discipline an employee. The dissent argued that the realities of the workplace reveal that in the largest companies, supervisory authority is delegated to leads and to hold a victim to the standard of finding a supervisor only to be one with power over ultimate employment decisions is unrealistic and gives large employers an unfair "pass."

But the decision goes further to harm employees by holding that even when the harasser is a supervisor, the employer is only liable when they are negligent in their supervisory duties. Some examples given by the court were the failure to monitor the workplace, failure

to respond to complaints of harassment and/or discrimination, lack of a system for reporting harassment, or a policy of discouraging complaints. (I have often-times found another act which the court seems to have overlooked, and that is "negligent hire." It is not hard to find acts of past misconduct or reckless thinking (say via Facebook) which could lead to a lawsuit or exposure of an employee to these bad acts.

The dissent in the *Vance* opinion urges Congress to follow the example of the Lilly Ledbetter Equal Pay Act, which overturned the Supremes on when the statute of limitations (time allowed) to sue should start to run in Federal Age Discrimination Cases. This practitioner joins the dissent. California employees are entitled to sue their employers for harassment when based on a prohibited category such as age, sex, race, religion, physical or mental conditions. Let's make that right - national in scope.

About Our Firm

S D & A StephenDanz & ASSOCIATES

With over 30 years of trial and settlement experience, Stephen Danz & Associates is California's largest employee only, statewide law firm with offices in in Los Angeles (Mid-Wilshire, Brentwood, Pasadena), Orange County, San Diego, Fresno, San Bernardino, Oakland, San Francisco, Santa Rosa and Sacramento. Our firm is dedicated to representing employees in disputes against their employers. Our attorneys represent employees in class actions, wrongful termination cases, discrimination (age, sex, race, national origin, and physical or medical condition) and harassment cases, wage disputes, overtime pay cases, and rest and meal period cases.

Our experienced lawyers have represented thousands of employees throughout the State of California and have won numerous trials and arbitrations on their behalf. If you think you have a possible claim please contact our office immediately. We don't make empty promises - we deliver results. We provide free initial consultations. No Attorneys' fees unless we make a recovery on your behalf.

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