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Employment Law Alert

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New Supreme Court Rulings on Workplace Privacy, Sexual Harassment

The California Supreme Court has issued two important new decisions clarifying legal standards with respect to workplace privacy and sexual harassment. Brief summaries of the cases are below.

Hernandez v. Hillsides, Inc.: Privacy

An employer that hid surveillance cameras in an office won a reprieve from the California Supreme Court recently in *Hernandez v. Hillsides, Inc.*, when the court upheld the dismissal on summary judgment of an invasion of privacy action brought by two co-workers who shared the office. Hillsides, Inc., which operates a residence for abused children, installed hidden cameras in a private office shared by co-workers Abigail Hernandez and Maria-Jose Lopez, after determining that someone had been using computers in that office after hours to view pornography. Hillsides was concerned that the culprit could be a staff member who worked with the children, although the two women were not suspects. The cameras were hooked up to surveillance monitors and recorders, but were not activated during business hours when the women were in the office, and the women were never recorded. Nevertheless, after finding the hidden cameras, they filed a lawsuit claiming that Hillsides violated their right to privacy under the California Constitution and common law.

111 SUTTER STREET
SUITE 700
SAN FRANCISCO
CA 94104
415 464 4300 T
415 464 4336 F

The California Supreme Court noted that an invasion of privacy violation has two elements, both of which must be present for a claim to be actionable: 1) the employer "must intentionally intrude into a place, conversation, or matter" where the employee has a reasonable expectation of privacy; and 2) "the intrusion must occur in a manner highly offensive to a reasonable person."

The Court found that the first element was satisfied: Hernandez and Lopez had a reasonable expectation of privacy and the surveillance cameras in their office did amount to an intrusion on that privacy. The Court pointed out that the shared office was enclosed with a door that could be shut and locked, permitting the women some measure of refuge during the work day. Privacy, said the Court, "is not wholly lacking because occupants of an office can see one another, or because colleagues, supervisors, visitors, and security and maintenance personnel have varying degrees of access." Furthermore, employees in a shared or solo office "would not reasonably expect to be the subject of televised spying and secret filming by their employer."

However, the Court determined that the intrusion was not highly offensive and did not amount to "an egregious violation of prevailing social norms." Hillsides took steps to avoid intruding on the women's privacy such that they were not at real risk of being monitored during work hours and were never caught on camera or videotape. In addition, the surveillance was narrowly tailored to address legitimate business concerns of Hillsides regarding the protection of children at its residential facility.

Although the employer won, the Supreme Court's decision highlights the risks of workplace surveillance, particularly where the employer's reasons are not as compelling as in this case, and where the methods are more intrusive. Employers contemplating workplace surveillance should consult with counsel about the legal risks and ways to reduce them.

Hughes V. Pair: Sexual Harassment

In another case, *Hughes v. Pair*, the Supreme Court made it clear that offensive comments must be severe and pervasive if they are to rise to the level of unlawful sexual harassment. In Hughes, a trustee allegedly made offensive remarks to the trustor's guardian regarding his interest in having a sexual relationship with her. The trustee also suggested to the guardian that he might approve a large expenditure if she would be "nice" to him, adding: "You know everyone always had a thing for you. You are one of the most beautiful, unattainable women in the world. Here's my home telephone number and call me when you're ready to give me what I want." And later that day: "I'll get you on your knees eventually. I'm going to f*** you one way or another." The guardian sued under California Civil Code § 51.9, which prohibits sexual harassment in certain non-employment business relationships.

The Supreme Court ruled that under section 51.9, just as under the Fair Employment and Housing Act (FEHA) and Title VII, which apply to employment relationships, the conduct at issue must be severe and pervasive to establish a claim for hostile work environment sexual harassment. The Court explained that when a claim is based on no more than a few isolated incidents, the plaintiff must demonstrate that the conduct was "severe in the extreme," consisting of "a physical assault or the threat thereof." Upholding summary judgment for the trustee, the Court found that the few comments made during the course of one day, although "vulgar and highly offensive," did not meet the standard for actionable sexual harassment.

Miller Law Group has been providing employers with unparalleled California labor and employment law expertise for over a decade. If you have questions or would like further

information about the new law, please contact Michele Ballard Miller (mbm@millerlawgroup.com) or Carolyn Rashby (cr@millerlawgroup.com), or call 415-464-4300.

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