




Reasons a Case Goes to Trial


Principle


Differing Valuations


Too Close to Call


aa/rr 6

Demoted Police Officer vs. City



- Defendant's Facts
 - 20 years of service with city | current employee
 - Demoted from sergeant to police officer due to admitted misconduct
 - Passed over for promotion within months after demotion
 - Eligibility ranking
 - Proximity to demotion

aa/rr 7

Plaintiff's Causes of Action

- Violation of 42 U.S.C. section 1983
- Race discrimination under Title VII
- Race discrimination under FEHA
- Retaliation under FEHA
- Failure to take corrective action under FEHA

Premise of Liability:

aa/rr 8

Plaintiff's Allegations

- Accused HR Analyst in charge of promotional exams of discrimination because the passing score was changed to include minority candidates
 - During deposition, she testified her father was a member of the Black Panthers
 - During deposition she testified to her belief that African-Americans can not be racist
- Accused the Chief of Police of racism
 - Approved recruitment billboard picturing only minority officers
 - Authorized panel member who was an alleged racist

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9

Outcome

- The case settled & Plaintiff was subsequently promoted

Lessons Learned...

- Deposition of non-decision maker
- Cat's Paw theory of liability

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10

Fireman vs. City



- Defendant's Facts
 - Employed since 2008 as lateral hire
 - Good performance evaluations and encouraged to move-up-the-ladder
 - Encouraged to take captain exam in 2013; offered assistance to pass future exam, which he declined
 - The individuals allegedly targeting him were the individuals who encouraged him and offered to help him

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11

Plaintiff's Causes of Action

- Race harassment under FEHA
- Race discrimination under FEHA
- Retaliation under FEHA

Premise of Liability:

aa/rr

12

Plaintiff's Allegations

- Continued experiences of race discrimination
 - Numerous uses of the "N" word, both at him and behind his back
 - High-ranking individuals told co-workers to take him out back and teach him a lesson
- Leave requests intentionally misclassified and improperly rejected
- Attire of beanie/white t-shirt criticized as "thug" wear
- Denied opportunity to train probationary firefighters
- Promotional exams administered unfairly
- Not allowed to continue necessary training to maintain strike-leader training certification

aa/rr

13

Outcome

- Summary judgment granted, then overruled on appeal. Split verdict at trial, defense verdict on race discrimination claim | Plaintiff verdict on race harassment and retaliation claims. Demand was \$4.5million. Verdict \$900,000 and \$1.2 million in attorney's fees


Lessons Learned...

- Proceeded to trial because Plaintiff's settlement demand was too high in light of failure to agree to resign

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14

Produce Clerk vs. Grocery Chain



- Defendant's Facts
 - 18 years of service with company
 - Viewed violating company policy consuming grapes while stocking
 - Four managers observed action, two different times
 - Company video verifies behavior

aa/rr 15

Plaintiff's Causes of Action

- Disability Discrimination under FEHA
- Retaliation under FEHA
- Failure to investigate and take corrective action under FEHA
- Wrongful termination

Premise of Liability:

aa/rr 16

Plaintiff's Allegations

- Company no longer wanted to accommodate disability
- Managers were mistaken about on-the-job grape consumption
 - Motor-tic
 - Anxiety disorder
 - No video to corroborate manager's observations
- Accused company of violating work restrictions due to back-injury suffered on the job

aa/rr 17

Outcome


- The case settled for nominal amount after Plaintiff presented his case-in-chief at trial

Lessons Learned...

- Maintain evidence
- Monitor accommodations
- Loyalty of staff
- Consistency of Rule

aa/rr 18

Religious Employee vs. Water District



- Defendant's Facts
 - Less than 3 years of service
 - Seven complaints of discrimination were investigated | None substantiated
 - Lengthy disciplinary history
 - Verbal warning
 - Written warning
 - 3 corrective actions plans
 - 3-day suspension
 - 2-week suspension
 - Termination for insubordination, dishonesty and failure to follow corrective action plans

aa/rr 19

Plaintiff's Causes of Action

- Religious Discrimination under FEHA
- Retaliation under FEHA

Premise of Liability: Plaintiff claimed that all discipline was based on his exercise of his religious expression and retaliation. He claims that his supervisor orchestrated his termination.

aa/rr 20

Plaintiff's Allegations

- Supervisor questioned his religious beliefs
- Supervisor physically assaulted him
- Supervisor said *"Jesus won't save your job"*
- Supervisor blocked exit and said *"this is going to go down bad"*

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21

Outcome

- Defense verdict at jury trial

Lessons Learned...

- Cat's paw theory
- Effective use of Evidence Code section 352
- Plaintiff's credibility
- Jury composition

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22

Former Deputy City Attorney vs. City



- Defendant's Facts
 - 8 years of service with city
 - Took a leave of absence for an undisclosed medical condition
 - Prior to return to work, employer provided a memo re: poor performance
 - Memo prompted her request for indefinite leave
 - City terminated due to assessment that could not reasonably accommodate indefinite leave request

aa/rr

23

Plaintiff's Causes of Action

- Disability Discrimination under FEHA
- Retaliation under FEHA
- Failure to engage in the interactive process
- Failure to provide a reasonable accommodation
- Failure to prevent discrimination and retaliation

Premise of Liability: Plaintiff claimed that she was terminated because she had severe medical issues and city could have provided her more time to determine if she could come back to work given how much time it takes to replace a public employee.

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24

Plaintiff's Allegations

- City understood that Plaintiff had a "lengthy & complex" medical history
- Her medical leave request was treated differently than those of other employees
- Performance memo "derailed" recovery; intentional act by the City Attorney
- Interactive process was not engaged in good faith; City Attorney already decided to get rid of her
- Did not actually request indefinite leave
- She had recovered by the time the city hired her replacement

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25

Outcome

- The case settled

Lessons Learned...

- Self-help discovery
- After-acquired evidence
- Timing of performance memo?

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26

