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California Court of Appeal
Holds "Me Too" Evidence Is Admissible in Discrimination Lawsuit

"Me too" evidence of harassment or discrimination, or evidence that others were similarly treated by the defendant, has traditionally been excluded by California courts. Such evidence, which employees often attempt to introduce to bolster their claims of discrimination or harassment against their employer by showing that others were discriminated against in a similar manner, has been found inadmissible to prove the employer discriminated against a specific plaintiff. The rationale for excluding such evidence has routinely been that "me too" evidence offered to prove harassment or discrimination against a different individual is far too prejudicial and juries will place too much weight on this evidence.

However, a California court of appeal recently found a different reason to admit "me too" evidence when the court decided Johnson v. United Cerebral Palsy/Spastic Children's Foundation (2009) 173 Cal. App. 4th 740. The plaintiff in Johnson was employed as a counselor for the defendant charitable foundation and alleged she was discriminated against and terminated because of her pregnancy. She also alleged that her supervisor had a discriminatory animus against pregnant women and gave preferential treatment to gay and lesbian employees. The defendant filed a motion for summary judgment, asserting that it had conducted a good-faith investigation into plaintiff's time sheets and billing records, and concluded that she had falsified such records and that was the non-discriminatory basis for her termination.

Plaintiff introduced declarations of former employees stating that (1) they were fired by defendant after they became pregnant, (2) they knew of someone who was fired by defendant because she was pregnant, (3) they resigned because their supervisor made work stressful after they notified her they were trying to become pregnant, or (4) they knew of occasions when non-pregnant employees were dishonest or cited for

dishonesty, were not likewise fired by defendant. These employees worked at the same facility where plaintiff worked, they were supervised by the same people that supervised plaintiff, and their supervisors were, in turn, supervised by plaintiff's supervisor's supervisor.

The court of appeal reversed the trial court, holding that plaintiff produced substantial evidence that her firing was pretextual and that defendant had acted with discriminatory animus in firing plaintiff. Significantly, the court held that the "me too" declarations were admissible not to prove that plaintiff was discriminated against based on her pregnancy; rather, the declarations were evidence of defendant's intent or motive.

This decision is important for employers as they wrestle with decisions to terminate or demote employees who may fall into a protected category. Whereas prior law excluded "me too" evidence unless the plaintiff was a direct witness, now such evidence may be admissible. Employers must be cognizant when taking adverse employment actions against employees that the employer is treating all employees the same. Prior complaints or actions against other employees, unrelated to a particular plaintiff, may now be admissible to bolster an otherwise tenuous claim.

For more information about the topic above, contact Amanda Gimbel at agimbel@pkwhlaw.com or (916) 442.3552.

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