



December 13, 2004

### **Termination For Fear Of Complaint Is Unlawful Retaliation**

In its opinion in *Lujan v. Shala Minagar*, filed on December 9, 2004 (Appeal No. B170438), the California Court of Appeal ruled that an employer is liable for retaliation in violation of California Labor Code section 6310 when it terminates an employee out of fear that the employee may, in the future, file a workplace safety complaint with a governmental agency, even though the employee never filed a complaint with the agency.

In *Lujan v. Shala Minagar*, a facialist working at a beauty salon made a complaint of workplace safety to Cal-OSHA, which resulted in an inspection of the salon. The day after the inspection, the owner of the salon terminated the facialist and another person who worked as a hair stylist at the salon. The California Labor Commission initiated suit against the salon owner for violation of Labor Code Section 6310. That Section generally prohibits an employer from terminating or in any manner discriminating against an employee who made a complaint regarding employee safety to a governmental agency charged with enforcing workplace safety laws and regulations. At trial, both the facialist who made the complaint and the hair stylist testified that the hair stylist played no part in contacting Cal-OSHA. The hair stylist also testified that a manager told her she had been *terminated because the owner believed she had assisted in the Cal-OSHA complaint*. The owner testified that the hair stylist was fired because she had been an incompetent and troublesome employee *and because the owner was afraid that the hair stylist would be the next person to report her*. The trial court found that the Cal-OSHA complaint was a substantial factor in the decision to terminate the hair stylist, but found that the employer did not violate the law because the hair stylist did not actually file a complaint with a governmental agency and thus was not protected by the statute.

In reversing the trial court, the Court of Appeal considered that the intent of the statute was "to encourage workplace safety complaints and to punish employers who retaliate against employees as a result." The Court stated its belief that "firing workers who are suspected of planning to file workplace safety complaints can effectively discourage the filing of those complaints" thus, defeating the purpose of the statute. The Court therefore held that Labor Code Section 6310 applies to employers who retaliate against employees *whom they believe intend to file* workplace safety complaints.

Employers are well cautioned to take all workplace safety complaints seriously, whether they are made to the employer or to an agency, and more importantly, not to base any employment decision on a belief that the employee has reported *or may report* workplace safety concerns to a state or federal agency.

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