

## EMPLOYMENT LAW UPDATE

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***Laura Mathieu v. Norrell Corporation, et al.***  
**2004 WL 309175 (February 19, 2004, Cal.App.2 Dist.)**

***A Temporary Staffing Agency Is Held Liable For Retaliation Arising Out Of Conduct By An Employee Of Its Client.***

*By Jason A. Geller*

Norrell Corporation, a temporary employment agency, placed plaintiff Laura Mathieu in a position at its client Gulfstream Aerospace Corporation. While at Gulfstream, Mathieu's former boyfriend, an employee of Gulfstream, began harassing her. After she complained to Gulfstream, and then to Norrell several months later, Gulfstream terminated her employment allegedly for economic reasons.

Mathieu sued both Norrell and Gulfstream for sexual harassment and retaliation under the Fair Employment and Housing Act ("FEHA"), among other claims.

The trial court granted summary judgment in favor of Norrell. Mathieu appealed. The California Court of Appeal reversed the summary judgment on the retaliation claim.

In reversing the summary judgment, the Court held that Gulfstream and Norrell were "dual employers" and thus Mathieu was permitted to look to both employers

for redress as to her retaliation claims. The Court stated that, "the purposes of FEHA are promoted if both the staffing agency and its client are treated as the employer, and **employees of the client entity are treated as co-workers of employees of the staffing agency within the meaning of FEHA.**" (emphasis added.) The Court noted that Norrell never challenged Gulfstream's explanation that the termination was for economic reasons and never recommended that Gulfstream retain Mathieu. In concluding that there was sufficient evidence to reverse summary judgment, the Court also reasoned that there was evidence that Norrell did not make sufficient efforts to reassign Mathieu to another position after Gulfstream terminated her employment.

This case is particularly troubling for temporary staffing agencies because it broadly suggests that staffing agencies could somehow be held responsible for employees of their clients over whom they have no control whatsoever. The

case underscores the importance for staffing agencies to document their efforts to investigate known claims of harassment by the employees of their clients, but unfortunately provides little guidance as to the extent to which staffing agencies should investigate such claims to minimize or avoid potential liability.

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