

EMPLOYMENT LAW UPDATE

Juan C. Araneda

Jennifer A. Becker

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Irene K. Yesowitch

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Chapman v. Enos

04 C.D.O.S. 2132 (March 10, 2004, Cal.App.1st Dist.)

A “Supervisor” Within The Meaning Of FEHA Can Be One Who Directs The Daily Job Duties Of The Plaintiff.

By Jason A. Geller and Juan C. Araneda

April Chapman was an investigator for the office of the Sonoma County District Attorney. While she performed her duties under the actual direction of the deputy district attorney assigned to her unit, Bruce Enos, she was formally under the supervision of the senior and chief investigators. Enos directed Chapman’s daily duties to conduct investigations and trial preparation, and outlined her role in meetings and trainings. Chapman also cleared her time off with Enos before having it approved by the chief investigator, and believed Enos was her supervisor.

Within the first two months that Chapman began working with Enos, Enos developed a “crush” on her. He began acting inappropriately towards her in the workplace. Although Chapman told Enos that she only wanted a business relationship and asked him to stop his inappropriate behavior, he did not. Chapman complained to the district attorney who transferred her out of Enos’ unit. She later filed a lawsuit

alleging, among other things, sexual harassment and retaliation under the California Fair Employment and Housing Act (“FEHA”).

At trial, the pivotal issue was whether Enos was Chapman’s “supervisor” under FEHA. The trial court initially defined “supervisor” for the jury as “any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” Based on Enos’ request, the Court modified the instruction by adding that a supervisor must be “fully accountable and responsible for the performance and work product of the employees in his or her department or unit.”

However, in relying on the guidance of the U.S. Equal Employment Opportunity Commission, the Court of Appeal concluded that while “full accountability and responsibility” are signs of supervisory power, they are not required elements of the FEHA definition of supervisor. The EEOC guidance provides that a supervisor is one who “has authority to direct the employee’s daily work activities.”

Thus, employers should be mindful that although a supervisor may not have express authority over an employee, a management employee may be deemed a supervisor who may create vicarious liability for an employer under FEHA if he or she directs the alleged victim’s daily work activities, or if the victim reasonably believes that the alleged harasser had actual authority over him or her.

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