

EMPLOYMENT LAW UPDATE

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The Court Of Appeal Holds That There Is No Claim Against A Private Employer For Wrongful Termination In Violation of Public Policy Based On Employee's Exercise Of Free Speech Rights.

Grinzi v. San Diego Hospice Corp. 04 C.D.O.S. 5887 (June 30, 2004, Cal.App.4 Dist.)

By Jason A. Geller and Kevin Whittaker

Plaintiff Joan Grinzi worked as a case manager for San Diego Hospice and was terminated for wrongful use of Hospice's e-mail system. According to Grinzi, Hospice terminated her based on her membership in the Women's Garden Network, an investment group that Hospice believed to be operating a pyramid scheme.

Grinzi sued Hospice alleging wrongful termination in violation of the public policy based on the First Amendment to the U.S. Constitution. Additionally, Grinzi alleged that her termination violated the public policy contemplated by Labor Code Section 96(k). The trial court dismissed Grinzi's claims upon Hospice's motion and Grinzi appealed.

On appeal, Grinzi argued that the First Amendment and Labor Code Sections 96(k) and 98.6 provide a public policy against terminations for lawful conduct occurring during nonworking hours away from the employer's premises. The Court of Appeal disagreed. First, the Court of Appeal explained that the

First Amendment fails to establish public policy against terminations by **private** employers for speech-related activities. Instead, it expresses a guarantee of freedom of speech only against an action taken by the government. See, ***Hudgens v. N.L.R.B.*** (1976) 424 U.S. 507, 513. Thus, the First Amendment does not protect against "a private corporation or person who seeks to abridge the free expression of others."

Second, the Court found that Labor Code Section 96(k) on which Grinzi relied only provides a procedure under which the Labor Commissioner may exercise jurisdiction. The plain language of Section 96(k) does not describe public policy that creates a private claim, as Grinzi argued. Thus, the Court could not apply Section 96(k) to Grinzi's claims. Finally, Labor Code Section 98.6 is limited to lawful conduct occurring during nonworking hours away from the employer's premises in which the plaintiff asserted a recognized constitutional right. Grinzi asserted her

constitutional right of free speech; however, as explained above, such right is not recognized against private employers. Thus, the Court found Labor Code Section 98.6 inapplicable because Grinzi was not terminated for exercising a recognized constitutional right. Based on its conclusions, the Court of Appeal upheld the trial court's decision to grant Hospice's motion to dismiss the claims.

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