

EMPLOYMENT LAW UPDATE

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Phillips v. St Mary's Regional Medical Center
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The California Court of Appeal, Fourth District, holds that Article I, Section 8, of the California Constitution articulates fundamental public policy that may be violated by an employer's retaliatory conduct and that Title VII likewise articulates fundamental public policy even with respect to provisions that directly conflict with California law.

By Farand C. Kan and Karen Chan

Frederick Phillips, an African-American man, was employed as a social worker at St. Mary's Regional Medical Center, a nonprofit religious corporation. In January 1998, Phillips filed a complaint with the California Department of Fair Employment and Housing ("DFEH") and the U.S. Equal Employment Opportunity Commission ("EEOC") against St. Mary's alleging race and sex discrimination. Phillips and St. Mary's entered into a settlement agreement with respect to the DFEH and EEOC complaints. However, Phillips was terminated three months after the settlement.

Phillips then filed a lawsuit alleging breach of implied contract, breach of the covenant of good faith and fair dealing, retaliation in violation of the California Fair Employment and Housing Act ("FEHA") and wrongful termination in violation of public policy. St. Mary's moved for summary judgment on the

grounds that Phillips' at-will status precluded his contract claims, that FEHA did not apply to nonprofit religious corporations and that Phillips had failed to identify a specific public policy that had been violated by his termination. The trial court granted summary adjudication as to the contract and FEHA claims, but granted Phillips leave to amend his complaint to identify a particular public policy.

In his first amended complaint, Phillips cited FEHA, Article I, Section 8, of the California Constitution ("Section 8") and Title VII of the Civil Rights Act of 1964 ("Title VII") as manifesting public policies that were violated by his termination. The trial court then sustained St. Mary's demurrer without leave to amend. Phillips appealed.

The Fourth District Court of Appeal agreed with St. Mary's that Phillips' reliance on FEHA was misplaced

because nonprofit religious entities were exempt from FEHA at the time of Phillips' termination. Although FEHA was subsequently amended to cover religious corporations employing persons to provide health care at a health care facility, the Court held newly enacted provisions of FEHA could not be applied retroactively.

The Court, however, rejected St. Mary's contention that a Section 8 does not articulate a fundamental public policy against employer retaliation. Section 8 provides, "a person may not be disqualified from entering or pursuing a business, profession, vocation, or employment because of sex, race, creed, color or national or ethnic origin" and has long been accepted by courts as providing grounds for discrimination claims. The Court reasoned that employment discrimination often reveals itself in retaliatory conduct and, thus, held that Section 8 supports a claim for wrongful termination in violation of public policy even when the alleged misconduct consists solely of retaliation.

The Court also held that Title VII was an appropriate source for a public policy claim even in the face of conflicting California law under FEHA. As noted above, nonprofit religious entities were exempt from FEHA prior to 1999; Title VII contained no such exemption. St. Mary's contended that courts should not rely on federal law as articulating fundamental public policy when it is in direct conflict with state law. The Court concluded otherwise, stating that FEHA was not intended to be the only remedy for civil rights violations and that Congress intended the greatest protection possible for victims of

employment discrimination. It further emphasized that employers, at a minimum, are responsible for knowing the fundamental public policy of both the state and nation.

Although the holding of this case may have limited significance beyond its specific facts, it demonstrates yet again the tendency of the California Courts of Appeal to broadly construe state and federal civil rights laws to maximize the protections available to California employees. It also illustrates the risks of terminating an employee who has recently asserted employment related claims against the employer.

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