

EMPLOYMENT LAW UPDATE

Jennifer A. Becker
David P. Borovsky
Shoshana Y. Chazan
Chip Cox
Edward F. Donohue, III
Kathleen M. Ewins
Kathleen A. Foley
Bruce N. Furukawa
Howard M. Garfield
Jason A. Geller
J. Michael Higginbotham
John B. Hook
William L. Jacobson
Farand C. Kan
Anna Kapetanakos
Joseph P. McMonigle
Douglas J. Melton
Robin M. Pearson
Jessica B. Rudin
Richard J. Sciaroni
Steven Sharafian
Jennifer W. Suzuki
Jeanette Traverso
Karen L. Uno
Seth E. Watkins
Gerald G. Weisbach
Irene K. Yesowitch

August 5, 2002

Issue No. 61

California Law

Grant-Burton v. Covenant Care, Inc.
(2nd Dist. July 10, 2002) 02 C.D.O.S. 6182

Employees Have A Fundamental Right, Rooted In Public Policy, To Discuss With Other Employees Their Wages, Bonuses And Other Compensation Issues.

By Douglas Melton and Shoshana Chazan

Facts

Defendant Covenant Care owned 42 skilled nursing and assisted living facilities, each with its own Executive Director and Marketing Director. Sharon Grant-Burton was a Marketing Director at one of the Covenant Care facilities.

In February 1999, Grant-Burton attended a meeting of all Southern California Marketing Directors. At the end of the meeting, the conversation turned to bonus structures at the various facilities. Grant-Burton was surprised to learn that her facility was one of the few without a bonus structure. Grant-Burton told her colleagues she did not receive a bonus because her supervisor “did not believe in them.” However, she also said she did not care whether she received a bonus because Covenant Care was paying for her continued education.

Six days later, Covenant Care fired Grant-Burton, saying that her

termination was based on what she had said at the February meeting (although it refused to specify exactly what it thought Grant-Burton had said).

Grant-Burton sued Covenant Care, alleging, among other things, wrongful termination in violation of public policy. Covenant Care sought summary judgment, which the court granted on the grounds there was no established public policy protecting employees’ rights to discuss their bonuses. Grant-Burton appealed, arguing that the Labor Code gives employees the right to discuss with each other their wages, including bonuses. The Court of Appeal, Second Appellate District, agreed.

Analysis

As the Court of Appeal noted, to support a wrongful discharge claim, the cited public policy must be “fundamental and substantial.” With this in mind, the Court considered California Labor Code § 232, which provides, in pertinent part:

“[n]o employer shall do any of the following: [¶] . . . discharge, formally discipline, or otherwise discriminate against, for job advancement, an employee who discloses the amount of his or her wages.” The Court reasoned that this policy produces substantial benefits to the entire economy such as higher wages, job security and improved working conditions.

The Court also analogized Section 232 to the Federal National Labor Relations Act, which, among other things, guarantees union members’ right to “freedom of association in attaining improved wages and working conditions.” While Grant-Burton was not a member of a union, the Court reasoned that non-union employees should likewise be entitled to discuss their salaries and working conditions for their own benefit as for the benefit of the economy generally.

The Court accordingly held that Section 232 articulates a substantial and fundamental public policy entitling employees to discuss with other employees their wages, bonuses and other compensation issues.

Conclusion

Many California employers have discouraged, and some have specifically prohibited, employees from discussing with or disclosing to other employees the amount of their salaries. While employee conversations regarding compensation can be detrimental to morale at the workplace, such conversations are now considered by California Courts to be a protected part of the employment relationship. Employers should review their policies and procedures on this issue and revise them as necessary.

This publication is intended for general information purposes only and does not constitute nor is it intended to constitute legal advice. The reader must consult with legal counsel to determine how laws or decisions discussed here apply to the reader’s specific circumstances including whether the case may have been depublished after the date of this publication.