

EMPLOYMENT LAW UPDATE

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Walrath v. Sprinkel
02 C.D.O.S. 6015 (July 2, 2002)
First Appellate District, Division 2

Individuals May Be Personally Liable for Retaliation Under the Fair Employment & Housing Act.

By: Douglas J. Melton and Jason A. Geller

In considering California Supreme Court authority addressing individual liability for discrimination, as well as the language of the Fair Employment & Housing Act (“FEHA”), the California Court of Appeal held that a supervisor can be held *personally liable* for retaliation under FEHA.

Plaintiff Richard Walrath was employed by Hatcher Press, Inc. from 1976 through 2000. In 1995, he received training to work in the “Pre-press Department” at Hatcher. Walrath, however, became frustrated because he believed the training he and other older workers were receiving was inadequate. He wrote a letter to his manager complaining about being passed over for positions in a certain department because he allegedly did not have the training or skills to work there. Walrath’s direct supervisor, Stephen Sprinkel, learned of the letter.

Thereafter, Walrath and several other employees in his department were laid off. Walrath sued Hatcher *and* Sprinkel for age discrimination under FEHA, breach of contract, wrongful demotion in violation of public policy, retaliation for complaining about discrimination, and infliction of emotional distress. Hatcher and Sprinkel moved for summary judgment, which the court granted as to Sprinkel but denied as to Hatcher. Walrath appealed.

In reversing the summary judgment in favor of Sprinkel on the retaliation claim, the court noted that while the California Supreme Court has held that individuals are not liable for *discrimination*, it has not ruled on the issue of individual liability for *retaliation*.

The Court then focused on the retaliation section of FEHA which prohibits retaliation by any “employer, labor organization, employment agency, or

person.” The Court reasoned this language manifested legislative intent that individual supervisors could be held personally liable for retaliation. The Court also noted that several Federal cases addressing this issue concluded that individuals could be personally liable for retaliation.

Walrath is troubling. By holding that supervisors can be sued individually for retaliation, it exposes supervisors, who may be simply carrying out an employment policy of the company, to personal liability. This is precisely one of the reasons cited by the California Supreme Court as supporting its holding that individuals cannot be held personally liable for discrimination.

Employers should now expect plaintiffs to routinely allege retaliation, in addition to discrimination, as a means to name their supervisors as individual defendants. While doing so rarely increases the plaintiff’s potential recovery, it does increase defense costs and inject a more personal tone to the case. For these reasons, it also increases the plaintiff’s settlement leverage.

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