

EMPLOYMENT LAW UPDATE

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**Cucuzza v. City of Santa Clara**  
(December 23, 2002) 104 Cal.App.4<sup>th</sup> 1031

***The California Court of Appeal Applies Recent Case Law On The Continuing Violations Doctrine To Grant Employer's Motion For Summary Judgment***

By: *David P. Borovsky and Jason A. Geller*

The City of Santa Clara hired Sue Cucuzza in 1988 to work in its Automotive Services Department. Two years later, she was promoted to the position of service writer which included primarily administrative and some technical duties. In 1993, the City hired a new male foreman who immediately began performing the technical tasks that Cucuzza had been performing. Cucuzza wanted to perform the technical duties, but her supervisor restricted her to administrative tasks.

Distressed about this change in her job responsibilities, Cucuzza filed a grievance against her supervisor without mentioning a complaint for sex discrimination. In response, Cucuzza was offered an unrelated position in a different division, and was told that this was her only option if she wanted to get out of "the situation" in Automotive Services. She accepted the transfer.

One year later, Cucuzza transferred back to her service writer position in

Automotive Services. She was not, however, allowed to resume performing the technical duties. Cucuzza remained in the job until around 1998, when she filed a sex discrimination charge with the Department of Fair Employment and Housing ("DFEH"). She later sued the City for sex discrimination arising out of the supervisor's refusal to allow her to perform technical duties and some stray remarks he made that she claimed were hostile towards women.

Cucuzza alleged in her complaint that the sex discrimination that had begun in 1993 continued until the end of her employment with the City through a series of other related acts. All of the related acts involved assigning technical responsibilities to men, and restricting Cucuzza to performing administrative tasks. The City argued that the one-year statute of limitations precluded its liability for any acts that occurred more than one year prior to Cucuzza's filing her DFEH complaint. Cucuzza claimed that the City's conduct constituted a

“continuing violation,” and that the City was therefore liable for all of its acts dating back to 1993.

In granting the City’s motion for Summary Judgment, the Court applied the three-pronged test set out by the California Supreme Court in *Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798, to determine whether the City’s conduct constituted a “continuing violation.” Under *Richards*, a continuing violation exists if the employer’s actions are (1) sufficiently similar in kind; (2) have occurred with reasonable frequency; and (3) have not acquired a degree of “permanence.”

The Court concluded that no continuing violation occurred because Cucuzza’s situation had reached “permanence” when she complained about the loss of her technical job duties, and when the City told her that the only option was to transfer out of the department. The Court characterized this action by the City as a “definitive denial” of Cucuzza’s request to perform the technical job duties, thereby starting the statute of limitations.

Further, the Court held that Cucuzza’s subsequent transfer back to her previous department did not show an ongoing effort to resolve her initial request to perform technical duties. This might have otherwise delayed the running of the limitations because the parties’ discussions about her request would have been continuing. However, as the City had previously done, it again denied her requests to perform technical tasks when she returned to her previous department. Cucuzza’s subjective belief that she would be allowed to do those

tasks upon her return to the department was not evidence of ongoing discussions about her grievance.

For these reasons, the Court concluded that Cucuzza was barred from bringing an action for sex discrimination against the City based on any conduct occurring more than one year before she filed her complaint with the DFEH. Finally, the Court held that the stray comments by her supervisor did not support her claim because, in part, her supervisor was not involved in the City’s decision to restrict her to administrative duties when she returned to the department.

The Cucuzza case illustrates the application of the continuing violations doctrine, and the rule that no continuing violation can take place where the employer’s allegedly discriminatory actions have become “permanent.” This case offers guidance to employers seeking to potentially eliminate stale claims at summary judgment.

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