

EMPLOYMENT LAW UPDATE

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February 6, 2004

Issue No. 97

California Law

Kotla v. The Regents of the University of California (January 28, 2004) 2004 WL 163753

Expert Witness Testimony That Certain Facts Were “Indicators” Of Retaliatory Discharge Was Improper.

By Jason A. Geller and David P. Borovsky

Plaintiff sued the University, her former employer, after she was terminated after 14 years of work as a computer technician. She alleged that the University retaliated against her for her previous complaints of gender discrimination and harassment.

At trial, the court allowed plaintiff to offer testimony from a human resources management expert, who testified that certain pre-discharge events were “indicators” of the University’s retaliatory motive in discharging plaintiff.

After the jury found in favor of the plaintiff, the University appealed, contending that the expert testimony was improper. The California Court of Appeal agreed with the University and reversed the judgment, holding that the expert testimony was inadmissible under Evidence Code §801. Specifically, the expert testimony was improper because whether certain facts were “indicators” of retaliatory motive was an issue from which the jurors could properly draw their own conclusions based on their

common experiences. Furthermore, allowing “expert” testimony on this subject created a risk that the jury would pay unwarranted deference to the expert’s opinion, when in reality, the expert was in no better position than the jurors to evaluate the evidence of retaliation.

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