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## Evidence of Discrimination May Also be Used to Support Harassment Claims Under FEHA

Evidence of personnel management actions which supports a claim of discrimination under the Fair Employment and Housing Act (“FEHA”) may also be used to support a claim of harassment under recent California Supreme Court ruling, Roby v. McKesson Corporation, \_\_\_ Cal.Rptr.3d \_\_\_ [2009 WL 4132480]. This ruling expands the basis for harassment claims, making it easier for employees to establish such claims.

The employee was a customer service liaison. She began experiencing panic attacks that temporarily impeded her ability to perform the functions of her job. Her condition necessitated medication that caused an unpleasant body odor. The supervisor made negative comments about the employee’s condition in front of coworkers and openly ostracized her in the office. The supervisor also ignored the employee at staff meetings, overlooked her when handing out gifts and excluded her from office parties. In addition, the supervisor frequently reprimanded the employee and spoke to her in a demeaning manner.

The employee’s condition also resulted in frequent absences from work on short notice. The employer ultimately terminated the employee based on her absences. The employee contested her termination, asserting that her absences were the result of her disability. The employee sued for wrongful termination in violation of public policy, as well as discrimination, harassment, and failure to accommodate in violation of FEHA.

At the trial court level, the jury found in favor of the employee on all claims. The employer appealed the judgment to the California Court of Appeal. The Court of Appeal held that discrimination claims and harassment claims are distinct and that evidence of personnel management actions could support a claim of discrimination, but not a claim of harassment. As such, the court found that there was insufficient evidence of harassment. The employee appealed the decision to the California Supreme Court.

The Supreme Court agreed that harassment and discrimination are separate claims under FEHA. It explained that discrimination refers to changes in the terms and conditions of an individual’s employment based on an official action taken by the employer. In contrast, harassment refers to situations in which the social environment of the workplace becomes intolerable due to the harassment. Discrimination requires action by an individual with decision-making authority, whereas anyone within an organization may commit harassment. However, despite being distinct claims under FEHA, the Supreme Court found that the same evidence could be used to support both harassment and discrimination claims. Consequently, the Supreme Court reinstated the jury’s harassment verdict.

This decision confirms that school districts must be diligent in their efforts to promote and enforce non-discrimination and harassment policies. In addition, school districts should continue to engage in the interactive process whenever they become aware that an employee may have a disability that requires accommodation.

Should you have any questions regarding this case or its impact, please contact one of our four offices.

*F3 NewsFlash prepared by Peter Fagen and Susan Winkelman.  
Peter is a partner in the F3 San Marcos office.  
Susan is an associate in the F3 San Marcos office.*

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6300 Wilshire Blvd., Suite 1700, Los Angeles, California 90048 Tel. 323.330.6300 Fax 323.330.6311  
70 Washington St., Suite 205, Oakland, California 94607 Tel. 510.550.8200 Fax 510.550.8211  
520 Capitol Mall, Suite 400, Sacramento, California 95814 Tel. 916.443.0030 Fax 916.443.0030  
1 Civic Center Dr., Suite 300, San Marcos, California 92069 Tel. 760.304.6000 Fax 760.304.6011

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