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Management Alert

Adding Insult to Injury: Wage and Hour Violations May Now Support Constructive Discharge Claims in California

Wage and hour litigation has just become even more painful for California employers. In addition to claims for unpaid wages and penalties, employers can now expect to see related claims for constructive discharge. In *Vasquez v. Franklin Management Real Estate Fund, Inc.*, the Court of Appeal ruled that employees may, in certain circumstances, claim that a Labor Code violation has caused their constructive discharge, enabling them to seek compensatory and punitive damages for wrongful termination.

The Facts

Franklin Management Real Estate Fund, Inc. ("Franklin") employed Jorge Vasquez as a Maintenance Technician, at a rate equivalent to a $10 hourly wage. Vasquez claimed that he drove his personal truck up to 30 miles per day for work-related errands, incurring mileage expenses of $330 per month. Vasquez claimed that his employer refused to reimburse him for those expenses, however, thereby reducing his effective wage to below the $8 hourly legal minimum. Vasquez contended he complained to his employer about the failure to reimburse his expenses, but to no avail. He thus asserted he had "no choice but to resign."

Vasquez sued Franklin for constructive discharge in violation of public policy on the theory that his employer's refusal to reimburse him for auto expenses had created an intolerable working environment that forced him to resign.

The trial court dismissed his constructive discharge claim, reasonably concluding that "failing to pay mileage expenses of $15 per day is not conduct that is so intolerable or aggravated that a reasonable person in the employee's position would have felt no choice but to resign."

The Appellate Court Decision

The Court of Appeal reversed the trial court, concluding that Vasquez could assert a claim for constructive discharge. The Court of Appeal acknowledged that "deprivations of salary or other economic benefit" do not generally support a constructive discharge claim and that "in the typical case, an employer's failure to reimburse an employee for expenses that should have been borne by the employer would not create such intolerable working conditions that the employee would have no option but to resign."

Here, however, the Court of Appeal thought the following facts were atypical:

- The alleged failure to reimburse mileage expenses deprived Vasquez of a "significant percentage of his already low salary."
- The alleged failure to reimburse caused Vasquez's pay to fall below the minimum wage, rendering him "unable to pay basic living expenses."
- Driving his car without reimbursement meant that Vasquez could not afford to maintain his car: "Had he continued, he would have soon found himself with no job and no vehicle."

Under this particular scenario, the Court of Appeal reasoned that Vasquez could pursue a claim for constructive discharge based on an underlying business expense reimbursement claim under Labor Code section 2802.

What *Vasquez* Means for Employers

The impact of *Vasquez* is unclear at this early stage, but it should be limited. First, to take advantage of *Vasquez*, a plaintiff must resign. Also, under the Court of Appeal's decision in *Gibson v. Aro*, a constructive discharge plaintiff must give the employer notice that intolerable conditions caused him to resign. While the *Vasquez* court did not address this point directly, it did note that Vasquez had told his employer that the failure to reimburse his mileage expenses was creating an intolerable working environment.

Vasquez should also be limited to specific Labor Code violations. The logic of the opinion does not encompass technical Labor Code violations (such as wage statement violations) that do not reduce the effective rate of pay. The public policy reasoning in *Vasquez* centered on the fact that an individual earning less than the minimum wage would not be able to meet basic living expenses. *Vasquez* should therefore be limited to cases involving lower-wage plaintiffs. Even though *Vasquez* should be read narrowly, California employers can expect the plaintiffs' bar to attempt to cite *Vasquez* as a justification for constructive discharge claims in some wage and hour suits.

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