

One Minute Memo[®]



Employer Discipline Of An Employee Who Files An Unfounded Complaint Of Harassment Not Necessarily Unlawful Retaliation

It is unlawful for an employer to retaliate against an employee for engaging in a protected activity such as reporting harassment. But, is an employee *always* insulated from adverse employment actions based on protected activity? In a case of first impression, on January 23, 2012, in *Joaquin v. City of Los Angeles*, the California Court of Appeal held that an employer did not unlawfully retaliate against an employee for making a complaint of sexual harassment where the employee's complaint was found to be total fabrication. In this case, the employee was fired not for making a complaint of harassment, but for doing so falsely.

The Background Facts

The plaintiff, Richard Joaquin, was a Los Angeles Police Department ("LAPD") officer. An LAPD sergeant, James Sands, sometimes was Joaquin's supervisor. Following a dispute between Sands and Joaquin in 2005, Joaquin anonymously reported that Sands was sexually harassing him. The matter eventually went to Internal Affairs investigators, who interviewed Joaquin.

Joaquin told Internal Affairs about seven incidents in which he felt that Sands had made improper advances. According to Joaquin, Sands asked him if he would "like to go out sometime," told him "you have nice arms," and started appearing at Joaquin's traffic stops to observe him. Internal Affairs determined that Joaquin's allegations were unfounded.

When Sands learned of the allegations, Sands filed a complaint against Joaquin with Internal Affairs alleging that Joaquin had retaliated against Sands for their dispute by filing a false complaint, and that Joaquin provided false statements during the investigation.

The Sands complaint against Joaquin resulted in a formal Board of Rights hearing conducted by a three member panel consisting of two police officers and a civilian. The Board of Rights concluded that Joaquin had filed a false harassment complaint against Sands. Consequently, the LAPD terminated Joaquin's employment. Joaquin appealed his termination to the Superior Court for a new trial. The Superior Court concluded that the evidence did not support Joaquin's termination, and ordered him reinstated.

Meanwhile, Joaquin sued the City of Los Angeles for retaliation in violation of the California Fair Employment and Housing Act ("FEHA"). A jury awarded him \$2.1 million in lost wages, benefits, and emotional distress. The City appealed the judgment.

The Appeal

The Court of Appeal reversed the trial court, concluding that Joaquin failed to prove that firing him on the belief that he had filed a false harassment complaint was unlawful retaliation.

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Because no California decision had addressed whether a false report of harassment could lawfully serve as the basis for an adverse employment action, the Court of Appeal relied on federal appellate decisions interpreting Title VII. Those decisions upheld discharges of complaining employees on the basis that the discharge was not for filing a complaint, but rather for making untruthful statements in the complaint or during the investigation. Thus, the Court of Appeal concluded that “an employer may discipline or terminate an employee for making false charges, even where the subject matter of those charges is an allegation of sexual harassment.”

Joaquin argued that the City’s retaliatory intent could be inferred from (1) Sands’s desire to have Joaquin disciplined for making a sexual harassment complaint, (2) Sands’s initiating the Internal Affairs investigation, and (3) Internal Affairs and the Board of Rights overlooking evidence in favor of Joaquin. The Court of Appeal rejected that argument, finding there was no basis for the jury to have concluded that the Board’s decision to discharge Joaquin was motivated by retaliatory animus.

Similarly, because it was the Board and not Internal Affairs that decided to discharge Joaquin, any influence that Sands had on the Internal Affairs investigation did not bear on Joaquin’s termination. Finally, Joaquin’s assertion that Internal Affairs and the Board overlooked evidence in his favor was nothing more than an argument against Sands’s credibility, but there was insufficient evidence for the jury to find that the Board’s credibility determinations were unreasonable. Therefore, the Court of Appeal reversed the jury’s verdict.

What *Joaquin* Means for Employers

Employers should be very cautious about relying on *Joaquin* to justify the discharge of an employee who has erroneously claimed workplace harassment. Whether an employer can avoid liability for unlawful retaliation when basing an adverse employment action on a protected activity will turn on the facts specific to each case.

The facts in this case are highly unusual, and the Court’s holding may be limited to them. In this case, for example, the discipline was imposed by a three-member quasi-adjudicatory panel. In a more conventional discharge scenario, in the private sector, a court might be much less likely to conclude that the decision-making process was insulated from the potential bias of witnesses who were advocating the discipline. Absent a clear, legitimate, non-retaliatory reason for an adverse employment action, such as the false harassment complaint here, an employer’s decision to terminate an employee for engaging in protected activity is potentially dangerous and should be undertaken only with a full understanding of all of the relevant facts.

Employers should also consider the possibility that harassment charges made in the context of an administrative charge or proceeding might be absolutely privileged, and thus protected against retaliation even if the complainant’s allegations are knowingly false. Some federal courts have upheld discipline of the employee in those circumstances, but some have not, and the California Supreme Court has yet to rule definitively on the subject.

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